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CONTRIBUTORS TO THE MARCH ISSUE

FRITZ STERN, Associate Professor of History at Columbia University, is the editor of *The Varieties of History from Voltaire to the Present.* This year he is a Fellow at the Center for Advanced Study in the Behavioral Sciences, Stanford, California, where he is completing a study of cultural pessimism and the politics of discontent in modern Germany.

SIDNEY KLEIN is Assistant Professor of Economics at Rutgers University. He is the author of *The Pattern of Land Tenure Reform in East Asia after World War II* and has contributed to the *American Economic Review, Malayan Economic Review* and the *Journal of International Affairs.* He is a Reserve Military Intelligence Officer and served in the Far East in World War II.

WILLIAM R. ALLEN, Assistant Professor of Economics at the University of California, Los Angeles, specializes in the history and the theory of international trade and finance.

HERMAN WALKER, JR., now in Paris, is First Secretary of Embassy, Foreign Service of the United States. He was formerly Adviser in the Commercial Policy Division of the Department of State.

GERARD BRAUNTHAL, Assistant Professor of Government at the University of Massachusetts, has resided in Germany at various times. He has specialized in the field of German political institutions, and is currently studying the rôle of German organized business in politics.

BEATRICE G. REUBENS, Lecturer in Economics at Barnard College, is interested in the economic development of early New York. The first part of her article, "Burr, Hamilton and the Manhattan Company", appeared in the December 1957 issue of the QUARTERLY.

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ADENAUER AND A CRISIS IN WEIMAR DEMOCRACY

BORN in defeat, humiliated by Versailles, mocked and violated by its irreconcilable enemies at home, the Weimar Republic never gained the popular acceptance which alone could have given its parliamentary system permanence, even in crisis. The upper classes, unreconciled to the passing of the old *Wilhelmine* order, regarded the Republic as an unworthy and potentially dangerous successor to the monarchy. The aristocracy resented the loss of its predominant position and the *bourgeoisie* lamented what they now remembered as their secure, comfortable, untroubled existence of before the war. Both groups might have accepted a conservative republic if it had not also been democratic, even socialistic; they might have accepted a democratic régime if the monarchy had remained to restrain it. As it was, they felt alien in the new Republic, the more so for the fact that the hitherto alienated, the lower classes, having attained political equality, were now aspiring to the privileges of culture and leisure which had traditionally been the monopoly of the few.

Throughout Weimar, then, the legitimacy of the Republic was a subject of debate and division; the virtue of the Republic was proclaimed by some, vilified by others, taken for granted by none. If German democracy had been a daily plebiscite, the result would have been a daily manifestation of the most profound and embittered division.

The past, in other words, dominated and divided the present, and the absence of a common historical consciousness of the recent past—of the defeat and the revolution—intensified all the hatreds and resentments that afflicted a defeated and

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impoverished Germany. Just as the mounting conflicts of material interests sharpened existing class antagonisms, so the post-war mood of defiance and disillusionment, the cynical debunking of all the old proprieties, hardened the intellectual and sentimental differences separating the several classes of Germany. Because of a deep, though not disinterested, nostalgia for an idealized past, because of a traditional disdain for politics and social egalitarianism, the upper classes, as well as a high proportion of ministers, teachers, bureaucrats, remained aloof from the Republic, and mistook their unfriendly attitude for a noble kind of nonpolitical idealism.

Still, Weimar had the inestimable advantage of existing—and that gave it a presumption of survival. Between 1924 and 1929, the Republic even enjoyed an apparent period of prosperity and stability. The wave of terrorist assassinations and *Putsches* seemed spent, the Allied forces were gradually withdrawn from the Ruhr and the Rhineland, and American capital flowed into the country. But even in its halcyon days, the deep divisions, the hatreds, and the ensuing political instability persisted.

How feeble and divided Weimar really was, how the basic issue of republicanism would inject itself and poison every parliamentary crisis, how the past and the future cast their shadows over Weimar's middle years and prevented the forming of any kind of political consensus—all this appears in microcosmic form in the sudden, unexpected, and thoroughly gratuitous cabinet crisis of May 1926. Outwardly not much happened: one more cabinet had been toppled and another, just like it, was formed. But in the brief interval between governments all the perplexing difficulties of Weimar, all the obstacles to an enduring parliamentary system came to the fore, and suggested that underneath the often frivolous factiousness lay deeper fissures which ultimately could bring about the destruction of the Republic. The course of that crisis, which is the subject of this article, strengthens one's sense of doom about Weimar, and yet in its unfolding it offered a fleeting prospect of reversibility—a tantalizing reminder that even Weimar had its lost opportunities. One of the minor human "ifs" of Weimar must surely be the prospect that Adenauer, this conservative democrat, this states-

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man of exceptional stature and courage, might have become chancellor in 1926.[1]

II

It was characteristic of Weimar that a seeming triviality—the government's attempt to alter the disposition of the national colors—should lead at once to an eruption of the struggle between republicans and anti-republicans and to the government's overthrow. It was equally characteristic that Weimar's official flag was a symbol of national discord, not of national unity.

The flag dispute was one of the legacies of the November Revolution and the National Assembly of Weimar. With their habitual mixture of doctrinaire zeal and political timidity, the Left republicans of the Assembly decided to abandon the national flag that Bismarck had invented for Imperial Germany—the black-white-and-red—and to put in its place the liberal tri-color of the *Vormärz* and of 1848—the black-red-and-gold. At the same time, they agreed that the old imperial colors, with the republican colors added in a small inset, should become the official merchant flag, because, so the argument ran, the gold could not be easily distinguished at sea. Accordingly Article III of the Weimar Constitution prescribed two flags for Germany—a reflection of past division and a provocation to new antagonism.

In April 1921, President Ebert issued an administrative decree, providing for no less than ten variations of these two basic colors, including a special flag for the postal service. The basic conflict continued to be between imperial and republican flags, and throughout Weimar these two flags were in continuous competition with each other.[2] The extreme

[1] Weimar had more than its share of human contingency. It has often been remarked that the German Republic lost many of its responsible leaders by their accidental or early deaths: Ebert, Erzberger, Rathenau, Stresemann, even Helfferrich. It may be ungracious to add that the unnatural longevity of others—Hindenburg, Ludendorff and Tirpitz, for example—did quite as much to weaken German democracy. Under Weimar, death itself was anti-republican.

[2] Echoes of this conflict can be heard even under Bonn, which recognized only the republican flag. Before a recent decision allowing German soldiers to wear their World War II medals, without the swastika, there was a vigor-

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Right-wing carried on its terrorist work under the defiant sign of the old flag. Even moderate republicans had a sentimental longing for the symbol of the old order, and certainly a man like Hindenburg, despite his grudging display of the constitutional flag, was genuinely attached only to the old. The same was true of the millions of Germans abroad who had always associated German power and protection with the old flag, and who habitually hoisted it, even when the local consular authorities used the new, republican flag. The republicans, on the other hand, timid and uncertain, were intolerant of any tampering with their flag. It was the government's inept attempt to resolve this conflict and conciliate some of the discontented groups that brought about yet another crisis in the unstable parliamentary order.

By virtue of the multi-party system, not only the doctrinal conflict over the existence of the Republic, but also all the antagonisms of German society—confessional, material, regional—were reproduced in parliament, and obstructed, even paralyzed, its proper functioning. During most of the Republic the two largest parties were in opposition, encouraged in this by their extreme opponents who rejoiced at their self-imposed isolation: the Socialists left the Stresemann government in 1923, and the Nationalists [*Deutschnationale Volkspartei*], unable to swallow Locarno, walked out of the first Luther government in 1925. Thereafter it was possible to govern only through the temporary minority governments of the middle parties—the Democrats, Center, and People's Party. The spectacle of a weak and uncertain political authority, ever on the brink of crisis, confirmed and emboldened the contemptuous anti-republicans of the Right.

The second Luther Cabinet was organized in January 1926, after two months of protracted efforts to restore a great coalition government—from Socialists to People's Party—had been frustrated by the uncompromising Socialist demand for a return to the eight-hour day. In the end, Hindenburg called on the former Chancellor Luther, a remarkably unin-

ous debate in parliament whether the ribbons should carry the imperial or the republican colors. Over the opposition of the Socialists, the old won out. For the revealing debate, see *Das Parlament*, July 3, 1957.

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spiring and uninspired conservative bureaucrat, who was without party affiliation or even a seat in the Reichstag, to form another minority government.[3]

The survival of the Luther Cabinet depended on the alternating support of the Socialists and the Nationalists.[4] In most instances, the Socialists obliged, and on Socialist sufferance the Luther government staggered along, despite the sharp increase in unemployment and despite Stresemann's reversals in Geneva, where for petty and humiliating reasons Germany's admission to the League had been postponed. The government survived even the Socialist and Communist agitation in favor of the expropriation of former dynastic property, which in early May 1926 these two parties, in unaccustomed unison, were getting ready to submit to a popular referendum. Its fall was brought about from within, by Luther and Hindenburg, who, with Stresemann's sanction, drafted a new flag decree and thus reopened at a most inopportune time a troublesome and intractable issue.

On April 20, Chancellor Luther wrote to Stresemann suggesting that Hindenburg, on the occasion of his much-heralded visit to Hamburg on May 4, should issue a presidential decree ordering all German diplomatic missions abroad to fly not only the official republican flag, but the merchant flag as well. After legal experts had assured him of the constitutionality of the decree, Stresemann concurred, although he anticipated "political difficulties". Moreover, he "entirely agreed with the suggestion that the President should on this occasion express the wish that Germans overseas should henceforth fly the German merchant flag on their houses as well."[5] On May 1, after considerable

[3] Many of the prominent politicians of Weimar—Luther, Adenauer, Jarres, Koch-Weser, Gessler—came to national politics from careers in local or provincial administration, a tribute to the one persistently successful political tradition in Germany. At the time of the Adenauer candidacy, the *Berliner Tageblatt* remarked: "All our politicians are born mayors, and all our mayors are born politicians." May 15, 1926.

[4] Out of a total of 493 Reichstag deputies, the government could count on no more than 171 supporters (the Center had 69 deputies, the Bavarian People's Party 19, the People's Party 51, and the Democrats 32). The Socialists had 131 deputies, the Communists 45, the Nationalists 103, and the Nazis 14. The rest belonged to splinter parties.

[5] Gustav Stresemann, *Vermächtniss: Der Nachlass in drei Bänden*, ed. by Henry Bernhard, with the collaboration of W. Goetz and P. Wiegler (Berlin,

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debate, the Cabinet unanimously agreed to the projected decree.[6]

Still, sometime between the first and the fifth of May the government seems to have taken fright at its own boldness. Hindenburg made his great tour of Hamburg, but the decree was not issued. Outsiders may have cautioned the government.[7] At a ministers' conference on May 5, Dr. Külz, the Democratic Minister of the Interior, reported that the Center and the Democrats were developing "strong resistance to the projected decree." The Chancellor recommended a return to an earlier compromise, whereby the new decree would apply only to non-European areas and to those European cities outside Germany that were accessible to merchant ships. Otto Meissner, Hindenburg's *Staatssekretär,* "emphasized that the President would be unlikely to approve of such a distinction and that he would not give in." Luther declared he would talk to the President, who apparently did give in.[8] Still, the opposition's charge that the flag decree was another instance of unwarranted presidential interference had far more justification than contemporaries knew.

On May 6, the morning papers announced that Hindenburg had signed the flag decree the night before; henceforth

1932-33), vol. II, p. 389. Stresemann, though scrupulously loyal to the new flag, was at heart a partisan of the old. More than a year after the flag debate, he noted with regret that there were so few "people who would vote for the restoration of the black-white-and-red flag—like myself." *Ibid.,* vol. III, p. 278.

[6] Cabinet Protocols, *Alte Reichskanzlei,* German Foreign Ministry documents, in the National Archives, vol. 65, container 1838, frames D 768612-3.

[7] Among them was von Rauscher, German ambassador in Warsaw, who had been told of the projected decree a few days before by Stresemann. In a "strictly confidential" letter to Stresemann, on May 3, Rauscher warned "that the choice of time . . . appears unfortunate." Abroad, where admittedly foreigners were accustomed to the old flag, "it is not difficult to interpret the re-introduction of the old flag for the German missions as a deliberate and bragging sign of Germany's regained status as a great power, and as an emphatic end to the 'Versailles episode,' i.e., of a condition that unfortunately but understandably has not yet been attained." Rauscher urged instead a genuine compromise, including "respect for the home flag inside the home boundaries." He predicted that the extreme Right would oppose the decree—as a surrender to the Republic of the hallowed flag. Stresemann Papers, microfilm at Columbia University, vol. 37, reel 3145, frames H 161431-7.

[8] Cabinet Protocols, *Alte Reichskanzlei,* vol. 65, container 1839, frames D 768743-4.

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all German diplomatic and consular missions outside Europe, and those in European cities that were accessible to merchant ships, were to hoist the merchant flag as well as the official Reich flag. The republicans responded swiftly and violently.[9] The decree was unconstitutional, they charged, because it altered the Constitution without observing the prescribed constitutional procedure, and it was anti-republican because it infringed on the republican symbol. So strong was their outcry that it seemed unlikely that the Chancellor, who had had to countersign the decree, would be able to survive.

That same afternoon, the Socialist veteran, Scheidemann, speaking to the Reichstag on the question of expropriating dynastic property, denounced the government's action as an obvious "anti-republican demonstration." With great gusto he vilified the old imperial dynasty and ridiculed his parliamentary opponents.[10] The decree, he said, would be the subject of a full-scale Socialist interpellation: "A chancellor who dares to play in this fashion with what is sacred to the German Republic cannot be tolerated by us." [11]

During the next few days, news and rumors about the onrushing crisis dominated the papers and pushed aside the other important news—the British general strike and the final crisis of Polish democracy. In the country at large the republicans organized mass protests; in Berlin alone, 20,000 members of the republican guard, the *Reichsbanner Schwarz-*

[9] Theodor Wolff, the editor of the influential *Berliner Tageblatt*, summed up exasperated republican feeling: "With us Germans, if no great stupidity is committed for ten days we can be sure that on the 11th a formidable one will see the light of day." May 6, 1926. The official Socialist paper *Vorwärts* carried the news already on May 5 and commented: "The flag decree is incompatible with the spirit of the Constitution."

[10] His attacks were no less resented for the kernel of truth they contained. His apt remark, for example, "Oh God, on the 9th of November 1918 they all preferred to be live republicans instead of dying monarchists," must have wounded greatly. *Verhandlungen des Reichstags*, 195th session, vol. 390 (Berlin, 1926), p. 7034.

[11] *Ibid.* The Chancellor of course had had no intention of playing with anything that was sacred. To him the whole matter was a bagatelle, an administrative and not a political matter. As the Center's *Germania* wrote on May 6: "We would like to see the decree which the politically color-blind Mr. Luther would consider politically important." Quoted in *Berliner Tageblatt*, May 7, 1926.

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rot-gold, were mobilized and belligerently proclaimed republican solidarity. The leaders of the Reichstag *Fraktionen,*[12] who would decide the future of the government, moved a good deal more cautiously. This suggests once again that Weimar may have had far greater support among the people than among the leaders, most of whom had inherited and were still bound by the forms and fears of the deferential *ancien régime.* What angered the Reichstag leaders even more than the substance of the decree was the fact that none of them, not even the leaders of the government parties, had been consulted before its promulgation—another instance of the frequent tension between government members and parliamentary leaders of the same party.[13] Despite these hesitations, it became increasingly clear that the government would not be able to ride out the storm.

In order to shore up the régime, Hindenburg, on May 9, sent Luther an open letter, intended to be conciliatory.[14] Germany's comeback in the world economy, he wrote, "demands a more vigorous participation of all Germans abroad and their enthusiastic expression of loyalty to Germany at all public affairs."[15] This, the President feared, was being frustrated by the "unhappy flag dispute", which the decree sought to resolve. "Nothing is further from my mind, as I have repeatedly told you, than to remove the constitutionally established national colors." But "this recurrent flag con-

12 *Fraktion:* all the Reichstag deputies of one particular party.

13 Nor had the government consulted the Reichsrat, and on May 10, the Socialist Prime Minister of Prussia, Otto Braun, formally protested to Hindenburg that in the matter of the flag decree the constitutional prerogatives of the Reichsrat had been ignored. The Reich government maintained that the decree had been a purely administrative matter and that hence it had not exceeded its competence. Otto Braun, *Von Weimar zu Hitler* (2nd edition, New York, 1940), pp. 188-191.

14 Stresemann and Meissner seem to have drafted the letter. *Cf.* the memorandum of Henry Bernhard, Stresemann's private secretary, of May 8, regarding a phone call from Meissner who reported that the President had agreed to write the Chancellor in the sense agreed upon by Meissner and Stresemann. As motto Meissner cited: "Ebert gave the German people the *Deutschlandlied,* Hindenburg wants to take steps to give Germany a uniform flag." Stresemann Papers, vol. 281, reel 3100, frame H 149643.

15 The solicitude of the conservative Germans, and of Stresemann in particular, for these overseas Germans was extraordinary and suggests that this was a more or less peaceful afterglow of pre-war imperialist fervor.

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flict, fraught with danger and disaster," must be ended through a conciliatory compromise, achieved by constitutional means. "That this compromise will fit the contemporary Germany and its goals and at the same time do justice to the origin and history of the Reich is my most devout wish." The Chancellor was instructed to consult with the legislative bodies and other representative groups in order to attain these ends: "May the time not be far distant when the German people will again harmoniously rally around one and the same symbol of its political existence." [16] Far from assuaging the republicans, the President's letter strengthened their suspicion that the flag decree was the first installment in a presidential plot to effect a final, anti-republican solution of the flag problem.

On May 10, the Cabinet met again and Luther reported that the Democrats would not oppose the Socialist motion of censure. Stresemann, obviously afraid of a crisis, sought to impress on the recalcitrant Democrats that a fall of the Cabinet or a failure of the flag decree might lead to a presidential crisis, "even if he [Hindenburg] should hold out at his post," which, Stresemann added, he considered unlikely.[17] He warned the Democrats that if they should bring about the fall of the Luther government, his party would find it difficult to join them in another cabinet of the middle parties.[18]

On the next day the Reichstag debate began, and the republican Left attacked the decree which it thought a blow against the Republic, a reactionary reconnoitering by the soldier-president whose loyalties had always been suspect. Breitscheid, representing the Socialists, introduced a motion of no confidence and declared: "We have the impression that in the recent past it has become governmental practice

16 *Deutscher Geschichtskalender,* ed. by F. Purlitz and S. H. Steinberg, 42nd Year, vol. I, Part A, January-June 1926 (Leipzig, n.d.), p. 17.

17 Hindenburg of course was an old hand at this game of threatening to resign in order to buttress his personal power. The Hindenburg-Ludendorff wartime dictatorship used precisely that weapon in order to browbeat and silence all opposition. The *Vorwärts* of May 9 reported rumors of a possible resignation by the President and correctly noted that this threat, used in this instance to intimidate the republicans, had been heard too often and hence had lost its sting.

18 Cabinet Protocols, *Alte Reichskanzlei,* vol. 65, container 1839, frames D 768784-90.

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to push Parliament more and more into the background and to treat it with an intentional or unintentional condescension."[19] In rebuttal the Chancellor sought to squelch all fear of further Right-wing moves and hinted that the need for the simultaneous introduction of the new flag might delay the execution of the decree. This did not appease the Left, but rather incited Count Westarp, the leader of the German Nationalists, to ridicule the government's timidity and to demand immediate implementation.[20] The Center—that chameleon of Weimar politics—pushed forward one of its most stalwart republicans, a former worker, Giesberts. Bravely straddling the fence, Giesberts pronounced his party's loyalty to the past—"we want to cherish the [imperial] tradition"—as well as to the Republic: "I want it understood that we who are loyal to the Constitution are loyal to the colors that the Constitution prescribed and we shall fight resolutely against any attempt to obscure or ignore the national colors." Although critical of the government's action, the Center would nevertheless refrain from overthrowing the government.

Stresemann's party was squarely behind the government: "The overwhelming majority of the Germans abroad is for the black-white-and-red," and among these were counted the 35 million Germans who had accepted foreign citizenship.[21] Like Luther, the People's Party thought that German profits and prestige would be enhanced by the return of the old flag. The day's debate ended with the Chancellor's promise that the decree would be implemented by the end of July—a delay that infuriated the Nationalists without conciliating the Socialists. The fate of the cabinet now depended on the Democrats, and it was generally assumed that they would oppose and thus overthrow the government.

19 But surely this kind of usurpation was facilitated, indeed invited, by the Socialists' pathetic vacillation between coöperation and opposition, between being a party of parliamentary compromise and a party of proletarian purity.

20 Characteristic of Weimar parliamentary manners were the catcalls during the debate. When Count Westarp said there was no particular need for the simultaneous introduction of the new flag everywhere, the Left shouted, "Honolulu! Liberia!", and the Nazis retorted, "Don't forget Palestine!" This was thought very funny by the entire house. *Verhandlungen des Reichstags*, 199th session, p. 7168.

21 For the complete parliamentary debate, see *ibid.*, pp. 7153-7185.

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During the night the government, or at least the Foreign Minister, thought that the Reich was being threatened from quite a different quarter. In his Reichstag speech Giesberts had alluded to subversive "developments in the Reich that were of the greatest importance to the security of the state." Alarmed by the widespread rumors of a projected Right-wing *coup d'état,* Stresemann at 11:30 P.M. telephoned the Assistant Commissioner of Police in Berlin, Friedensburg, who told him that a plot had indeed been discovered and its main outlines pieced together. The *Putschists* had planned to abolish the Constitution, dismiss Hindenburg and replace him by a *Reichsverweser* who in turn would appoint subregents for the individual *Länder* and would thus rule as a dictator. As for the means by which they sought to seize power, Friedensburg specified that they hoped to capture Berlin, "in collaboration with elements of the *Reichswehr,*" and for the rest planned to use emergency decrees. The conspirators belonged to the so-called patriotic societies and looked for leadership to the former Pan-German chief, Dr. Class, as well as to the mayor of Lübeck, Neumann, and to Hugenberg, who two years later was to become the leader of the German Nationalists.[22] Afraid that "we [were] in immediate danger of a great internal catastrophe, which fortunately had been averted," Stresemann urged Friedensburg: "Well, crack down on them [*Na, greifen Sie nur ordentlich durch*], and if you run into difficulties about parliamentary immunity I will intercede with my *Fraktion* for a suspension of immunity."[23] Later that night, the Prussian police, that bulwark of the republicans, did crack down and searched in-

[22] This cast must have sounded familiar to Stresemann, and he immediately expatiated to Friedensburg on Hugenberg's villainy. On January 22, 1926, two leaders from the *Jungdeutsche Orden,* Marauhn and Bornemann, talked with Stresemann, and Marauhn said that "he had refused all collaboration with these circles—he mentioned Hugenberg, Klass [*sic*], and Major Nicolai, because he wanted a reasonable national policy, not political adventures." In the context Marauhn even suggested that Hugenberg and Class might be the undercover central organization of National Bolshevism—an unlikely charge, but indicative of Hugenberg's repute. German Foreign Ministry files, Office of State Secretary Schubert, microfilm in the National Archives, vol. 5, Reel 2282, frames E 137254-7.

[23] See Friedensburg's memorandum of June 5, Stresemann Papers, vol. 38, reel 3145, frames H 161760-1; also Stresemann's own notes in *Vermächtniss,* vol. II, pp. 401-406.

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numerable homes, including those of some leading Ruhr industrialists. The evidence they confiscated suggested that the *coup d'état* had not been imminent. The *Putschists,* it appeared, planned to strike at the time of a real or staged Communist uprising in order to establish a Right-wing dictatorship. For weeks after these nocturnal raids, the Prussian government, and Braun and Severing in particular, were vilified by the Right for these precautionary steps. After it became known that Stresemann had sanctioned the police action, he, too, came under heavy attack, especially from those Ruhr industrialists of his own party whose houses had been searched. On June 3, Stresemann publicly acknowledged his part in the affair, but added that the information subsequently released made it appear doubtful that the Prussian police had had sufficient cause for its action. The incriminating material was turned over to the newly appointed chief public prosecutor, well known for his Right-wing sympathies, who after some dilatory efforts dropped the case altogether.[24]

On May 12, the Reichstag resumed its debate on the flag decree. The leader of the Democrats, Erich Koch-Weser, announced that his party had reluctantly decided to oppose the government.[25] The Nazi representative, Dr. Graefe, sneered at the Jewish press and complained of the "shameless arbitrary rule" that the Socialists were inflicting on Prussia. The Communists celebrated the flag decree as "the well-deserved kick in the pants which the *bourgeoisie* and the Junkers give their sometime relief-agents, the Socialists, as thanks for Socialist help in restoring their rule."[26] Vituperation was a common bond between Nazis and Communists, and both, of course, exulted in the embarrassment of their common enemies—the moderate republicans. Count Wes-

[24] Braun, *op. cit.,* pp. 197-198.

[25] Koch's enemies in the Reichstag charged that he was simply taking his revenge for having been cheated out of the promised Ministry of the Interior. In January 1926, Luther withdrew Koch's nomination at the behest of the Bavarian People's Party, which considered Koch too "unitarian". By an ironic coincidence, not noted by the contemporaries during the crisis, Koch had been the only Democrat in 1919 who voted for the retention of the imperial flag.

[26] *Verhandlungen des Reichstags,* 200th session, p. 7203.

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tarp of the German Nationalists announced that his party approved of the flag decree, but not of the weak-kneed government, and that consequently his *Fraktion* would abstain from voting. After the Nazi and Socialist motions of no confidence had been defeated, the Democratic motion was adopted by a vote of 177-146, with 103 Nationalists abstaining. The Socialists, Communists and Democrats had combined to defeat the government and thus precipitated the thirteenth cabinet crisis in seven years.

III

This particular crisis had not been anticipated and no one had a quick solution at hand. Every new crisis brought with it the chance of a majority government—by including either the Socialists or the German Nationalists. Republicanism was riding high—it usually did after a particularly flagrant outburst of anti-republicanism; witness the Kapp *Putsch* or the Rathenau assassination—and it seemed an auspicious moment to reconstitute the great republican coalition from Socialists to People's Party.[27] The Center, ever sensitive to shifts in popular moods, favored this solution. The People's Party, that quarrelsome remnant of the National Liberals of imperial days, whose hopes and memories and prejudices remained so close to the Nationalists even though their policies were less intractable or unprofitable, would have preferred a break-out to the right. But the stubborn fact remained that the Nationalists not only were non-republican, but were frozen in an utterly unrealistic stance on foreign policy. They dreamed of an intransigent, belligerent Germany that would wrest maximum concessions from the Allies—anything obtained peacefully, by compromise, was a reminder that Germany was no longer strutting about like a masterful giant. Consequently Stresemann was still being vilified by them. The Socialists, on the other hand, most happily accepted Stresemann and his promise of a Europe infused with a Locarno spirit, but they frightened their opponents with demands for a more radical social program.

[27] Not that the People's Party was unreservedly republican. As Stresemann noted shortly after the flag decree: "That the People's Party is not republican on principle, everyone has known since the first day of its program." Stresemann Papers, vol. 280, reel 3100, frame H 149591.

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Hindenburg's first move was to ask the Luther government to remain in office until a new chancellor had been found. Luther refused and resigned immediately, but the Cabinet remained. Gessler, the perennial Minister of Defense and the cabinet member with the longest tenure of service, was appointed acting chancellor, and later Hindenburg turned to him with the bid to form a new cabinet.[28] After a couple of days, he formally declined.

As soon as the crisis had broken, on May 12, the bargaining among various parliamentary groups began. The first on the scene was Dr. Scholz, the parliamentary leader of the People's Party, who on May 12 turned to the Nationalists with a bid for a Right-wing coalition.[29] This, it was reported, was vetoed by the Center which was already negotiating with the Socialists.[30] Hindenburg meanwhile was toying with the candidacies of Külz, the Democratic Minister of the Interior in the Luther Cabinet, or of Dr. Scholz, whose scarred face and distinguished military record made him *persona grata* to the President. In short, there was neither a generally accepted nor a preëminently eligible candidate.

On the evening of May 13, even before Gessler had given up the formation of a government, the leaders of the Center Party, Guérard and Stegerwald, telegraphed Konrad Adenauer, the 50-year-old Lord Mayor of Cologne, to come at once to Berlin.[31] Adenauer had on several occasions been

28 Stresemann, who was no friend of Gessler, had been forewarned about an early Gessler candidacy; on February 6, 1926, Consul Bernhard wrote him that in the next government crisis, the President would appoint Gessler and would thus play into the hands of various conspiracies within the *Reichswehr*. An eastern swing in foreign policy would ensue. "For the *spiritus rector* of all these plans one must look to Lieut-Col. von Schleicher, who dominated completely and in every respect not only the former Chief of the General Staff, Seeckt, but also the [present] Minister of Defense. Schleicher is described to me as a man of vast ambition, with an insatiable lust for power, who with all possible means of intrigue will certainly attempt to realize his plans." Stresemann Papers, vol. 279, reel 3100, frames H 149466-9.

29 *Berliner Tageblatt*, May 12, 1926.

30 Stresemann Papers, vol. 37, reel 3145, frames H 161463-4.

31 Shortly after his trip to Berlin, Adenauer composed, for his own purposes, a detailed *aide-mémoire* of his negotiations, which appeared for the first time in Paul Weymar's authorized biography, *Konrad Adenauer* (Munich, 1955), pp. 129-143; also an American edition, capriciously condensed and inaccurately translated, *Adenauer* (New York, 1957), translated by Peter De Mendelssohn. The following account draws heavily on these notes. For a

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mentioned as a possible chancellor, and the Centrist leaders now thought that this highly respected and successful mayor would be their most promising candidate.[32] The choice of Adenauer was itself a token of the Center's swing to a strong republican coalition. He was known as a "reliable republican. . . . At the Munich *Katholikentag,* which he chaired, a warm confession of loyalty to the Republic brought him into sharp conflict with the [anti-republican] Bavarian Monarchists."[33] He enjoyed the confidence of the Socialists, with whose votes he had been repeatedly elected president of the Prussian Staatsrat. The People's Party, on the other hand, was said to oppose him, largely because "after the Revolution he was said to have supported the detachment of the Rhineland from Prussia."[34] Adenauer's present-day critics have charged him with all sorts of separatist ambitions but most evidence seems to point to the fact that, although Adenauer favored Rhenish independence from Prussia, he did not want a break from Germany.[35] At the height of the

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sharp criticism of Weymar's book and the veracity of Adenauer's notes, see the review of the American edition by a leading historian, Gordon Craig, *Herald Tribune Book Review,* March 10, 1957, and the partisan echo of Craig's review in *Der Spiegel,* April 10, 1957. All subsequent references are to the German edition.

32 On November 24, 1923, the day after his resignation as Chancellor, Stresemann jotted down the names of five likely successors, including Adenauer. *Vermächtniss,* vol. I, p. 255. Adenauer had also been mentioned in 1920.

33 *Berliner Tageblatt,* May 15, 1926; the article continued: "Adenauer has proved himself a brilliant organizer and an intelligent administrator of Cologne, which owes its great rise not least to him." The *Vorwärts* of May 15 wrote: "Adenauer has several times before this been mentioned as a candidate for the chancellorship, but has always refused. He is regarded as one of the most outstanding men among the Prussian administrators."

34 *Berliner Tageblatt,* May 15, 1926.

35 Weymar, *op. cit.,* pp. 72-81, contends that Adenauer's activities in 1919 in support of a West German Republic were a political ruse, designed to kill off all genuine separatist agitation. Admittedly, this seems far-fetched, but Dr. J. A. Dorten, the notorious separatist leader, repeatedly refers to Adenauer as "the traitor", as the man who scuttled the Rhenish cause which at first he seemed to champion. See Dorten Papers, The Hoover Library, Stanford, California, and Dorten, *La Tragédie rhénane* (Paris, 1945), pp. 49-57. As the merest example of the mystery that surrounds this subject, contrast Weymar's report that Adenauer had always refused to receive Dorten and Dorten's account which describes in detail several meetings he had had with Adenauer.

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Ruhr crisis in 1923 he may—reluctantly—have contemplated a further step, the creation of a new West German state tied to Germany, but only if this would be accompanied by a simultaneous and complete understanding with France.[36] The charge of separatism, however, remains the sensitive point in Adenauer's past, and neither his political friends nor his enemies have been able to establish the truth so that it will stick. Adenauer himself seems loath to speak on the subject.[37]

"Feeling no inclination to take over the post of chancellor," Adenauer procrastinated and did not arrive in Berlin until the evening of May 14.[38] Even as he was traveling to Berlin the Pan-European retreat from democratic government was gathering speed. In banner headlines the morning papers announced that Marshal Pilsudski had established a military dictatorship in Poland—another democracy, established in the Wilsonian aftermath of the war, had been snuffed out. How many Germans, one wonders, recognized this warning of the precariousness of parliamentary democracy? How many sensed that all new European democracies were in jeopardy?

On his arrival, Adenauer was met by Stegerwald and Guérard, who assured him that they had "until now always deliberately refrained from proposing me for the post of chancellor, because they felt I was not to be wasted on a purely temporary or interim term of office." This time a cabinet of the great coalition was to be formed, "a stable and durable majority government."[39] Guérard and Stegerwald reported

[36] See, for example, Adenauer's remarks at the controversial meeting of Rhenish representatives with the German government on January 9, 1924, Stresemann Papers, vol. 265, reel 3111, frames H 146619-25. I am indebted to Edgar Alexander for calling my attention to the full record of the meeting as well as to the published account in Stresemann's *Vermächtniss*, vol. I, p. 282, which is abridged—in a manner prejudicial to Adenauer.

[37] It is remarkable that despite Adenauer's prominence neither a satisfactory biography nor an account of his public life in Weimar exists. Edgar Alexander's *Adenauer and the New Germany* (New York, 1957) is a thoughtful introduction to his forthcoming two-volume biography, which is intended to fill this gap.

[38] Weymar, *op. cit.*, p. 129.

[39] *Ibid.*, pp. 130-131.

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that the parliamentary leader of the People's Party, Dr. Scholz, had approved the formation of a great coalition, contingent on the resolution of three issues: the revaluation of the mark, the flag decree, and the expropriation of the former dynasties. The Socialists had agreed as well, and everybody expected that these three questions could be settled without difficulty. If need be, Adenauer should form a neutral transition cabinet; after the plebiscite on expropriation, which was to be held on June 20 or before, he could form a permanent, majority government.

Adenauer was impressed by what he had been told and asked himself whether in such circumstances it was not "[his] duty to make a great personal sacrifice and take over the post of chancellor."[40] The next morning he told the two Centrist leaders that he would pursue the possibility of forming a cabinet further, despite his "doubts and scruples" regarding (1) The Dawes Plan: "It seemed clear to all concerned . . . that already by 1927 the terms of the Dawes Plan would become impossible to fulfill. Therefore, in my opinion, we should not have signed the Agreement." (2) Locarno:

> Although I fully and unreservedly accepted the situation created by the Locarno Treaties, in order to get as much out of them for Germany as possible, I was nevertheless profoundly unhappy about the unsteady, seesaw character of German foreign policy, and could not approve of the manner in which this policy was conducted. . . . Furthermore, as far as I knew, our negotiations at Locarno had been conducted rather unskillfully. . . . All in all, as far as I could judge from the outside, our foreign policy up to the present time had not been exactly happy. On the other hand Herr Stresemann must remain in the cabinet, quite apart from the fact that he was the leader of one of the future coalition parties.

Adenauer refused any delay in the formation of a great coalition: "Under no circumstances would I accept the chancellorship on the uncertain *expectation* that the great coalition

40 *Ibid.* There was little reason for Adenauer to trade a safe and successful administrative post for a political appointment of uncertain promise and duration. The *Berliner Tageblatt* wrote of his candidacy on May 15: "In truth it takes today a great deal of self-abnegation and true patriotism to put oneself in the firing range of the extreme Right-wing mudslingers."

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may *some day* be established." [41] He agreed to see Gessler and to consult with Scholz of the People's Party and Hilferding of the Socialists.

Gessler concurred in Adenauer's desire for a stable majority government—a minority government "would be able, at best, to administer, but could not govern." He also told Adenauer to see Stresemann "who was a little worried by my appearance in the capital." [42]

Adenauer saw Scholz first, and told him that he would insist both on a great coalition and on complete freedom to select his own ministers without being bound to accept the nominees of the coalition partners. Scholz's reply was brutally decisive, nor did he haggle over petty details. His party, he said, considered a great coalition impossible: "The swing to the right has to come." If this coalition could not be effected immediately, the party would prefer another minority government, and, despite some grumbling by a few members, would be happy to have Adenauer as the head of such a government. "What was totally out of the question for them was to join the Socialists in a government. Not even a government based on Socialist support in parliament was acceptable to them. As for the President, his views on this were exactly the same." [43] The party might not even remain in coalition with the Democrats, unless Dr. Koch explicitly withdrew "the notice he had given to the present coalition, and unless they accept the flag decree without mental reservations." [44]

Adenauer had failed before he had really begun. Scholz had torpedoed his candidacy, and was told so by Adenauer:

> in these circumstances it was, of course, quite impossible for me to accept the office of chancellor, and this corresponded to a large extent with my own personal wishes. On the other

41 Weymar, *op. cit.*, pp. 132-133.

42 *Ibid.*, p. 134.

43 *Ibid.*, pp. 136-137. There is every evidence that Hindenburg did not share these views.

44 Scholz and Stresemann had met on May 13 (before Adenauer's candidacy was known), discussed the conditions for the formation of a new government, and agreed that there should be "no negotiations with the Democrats until Koch withdraws his notice." The cryptic account of their talk suggests that they had agreed on a policy for the People's Party. Stresemann Papers, vol. 37, reel 3145, frames H 161463-4.

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> hand, what he had said could really make one weep, because it revealed the frightful picture of our partisan strife and divisiveness. I could well understand, I said, that there were many elements among the German Nationalists, especially among their supporters in the country, who were of value to the state, but surely it should be the foremost duty of everyone with the well-being of the fatherland at heart to win over the many millions of Social Democratic supporters everywhere in the country to the principles of the state and to train them as responsible citizens. This was manifestly impossible, I said, if the Social Democrats were simply excluded from all share in the government.[45]

Adenauer then saw Hilferding, who was very much more accommodating. He too hoped for a long government and suggested that, if necessary, Adenauer should first form a minority government, which the Socialists would nevertheless support. If the People's Party should persist in its obstructive tactics even after the plebiscite, the President, Hilferding thought, should threaten it with parliamentary dissolution. Adenauer again rejected any notion of an interim government and expressed doubt moreover that Hindenburg would grant him a dissolution that would favor the Left and Center, i.e., those "parties which, considering the whole character of Hindenburg, must be alien to him."[46] But, whatever Hilferding's concessions and demands, Adenauer had made up his mind to return to the healthier conditions of Cologne, and he so informed Gessler. The latter was much surprised at Scholz's intransigence, and "suspected all this might be due to Stresemann, who feared that I was too strong a man for him to deal with"—a suspicion that Adenauer shared and undoubtedly encouraged. Later in the day, Stresemann and Scholz assured the Center *Fraktion* that Adenauer's impressions of Scholz's attitude must have rested on a "misunderstanding", though Adenauer rather persuasively discounts the possibility of a misunderstanding during an hour-long interview, at which he took full notes.

[45] Weymar, *op. cit.*, pp. 137-138. Adenauer's formulation of the problem is odd, however correct his conclusion. Despite their occasional revolutionary rhetoric and despite some radical groups within the party, the Socialists were the single largest group stolidly loyal to the state, i.e., the Republic.

[46] *Ibid.*, p. 140.

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According to Adenauer, "the general view was that Stresemann had used Scholz to make it impossible for me to take over the chancellorship." [47]

After Adenauer's withdrawal, the cabinet crisis was solved with great rapidity, largely because of Hindenburg's well-advertised impatience. The Cabinet met on the same afternoon, May 15, and Marx, a former Centrist Chancellor and the Minister of Justice in the Luther Cabinet, was for the first time proposed as a possible successor to Luther.[48] On Sunday, May 16, Gessler, Scholz, Stresemann, Marx, and some others met, and Scholz agreed to the Marx candidacy and the eventual formation of a great coalition. "Scholz staged an obvious retreat . . . and granted Marx what he had denied Adenauer." [49] On the evening of May 16, Marx went to see Hindenburg, and on the next day he was appointed Chancellor and all the other ministers of the Luther Cabinet were confirmed in their posts. "The Luther Cabinet without Luther", a characteristic failure to exploit an opportunity, came into office a week after the old government had resigned and remained in office for seven months. The flag decree, incidentally, was carried out, but the flag conflict persisted until the end of the Republic, seven years later.

IV

It is of some interest, if perhaps only as a kind of historical whimsy, to discover whether it was indeed Stresemann who obstructed the Adenauer candidacy. That it was his party which thwarted Adenauer was the general belief of observers at the time and seems incontrovertible.[50] But there were

[47] *Ibid.*, pp. 142-143. It is regrettable that Adenauer in his notes sought to document this charge against Stresemann by a piece of utterly inconsequential gossip.

[48] Apparently, on the initiative of Stresemann. Letter to writer, June 26, 1957, from John Zeender, who has been working on the Marx Papers.

[49] *Berliner Tageblatt*, May 17, 1926.

[50] *Berliner Tageblatt*, May 17, 1926, notes that Adenauer failed "because he had the right idea, i.e., that in the face of the great difficulties which the Reich faced in the near future, at home and abroad, it required a firm majority government, and that the majority government could be constituted only through a cabinet of the great coalition. If Adenauer's program did not appeal to the People's Party, apparently his strong personality displeased

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hints even then that it was Stresemann's direct intervention which led Scholz to be obdurate one day to one Centrist and conciliatory the next day to another Centrist.[51]

There is certainly ample evidence of Stresemann's long-nurtured dislike and suspicion of Adenauer.[52] On May 17, he saw two important foreign diplomats with whom he discussed Adenauer, and his notes report their unsympathetic views sympathetically. One was M. Hesnard, Briand's confidant and press attaché at the Berlin embassy, who "was surprised that the Center should single out Adenauer, of all people, and noted that Adenauer during the Ruhr struggle had maintained the best relations with the French, and had taken an entirely different position from the then Reich government. Adenauer was also one of the first to wander in and out of Ambassador Laurent's office." The other was

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Stresemann and some other members of the Cabinet, who preferred to remain among themselves." In the Reichstag debate on the Marx Cabinet, on May 19, both Herman Müller of the Socialists and Count Westarp of the Nationalists asserted that Adenauer's efforts had been thwarted by the People's Party. *Verhandlungen des Reichstags,* 206th session, pp. 7323 *et seq.*

51 Even the editor of the *Vermächtniss,* Stresemann's friend Bernhard, wrote: "This [Adenauer's] attempt failed because of the opposition of the German People's Party, which acted in closest agreement with Stresemann." *Vermächtniss,* vol. II, p. 392.

52 The sources of Stresemann's dislike ran deep and were by no means exclusively political in character. Precisely a year before Adenauer's appearance in Berlin, on May 16, 1925, Stresemann noted in his diary:

"The Cologne Millennial Festival suggests a comparison with Munich. The Munich celebrations displayed the robust populist genius; here we have Rhenish culture, gaiety, and ancient prosperity. Personally, Adenauer is a brilliant success at Cologne; whether he always acts in the interest of the Reich is indeed doubtful. The luncheon at the Townhall was wonderful, the magnificently appointed table in particular. The lord mayors of today's Germany are in reality, after the great industrialists, the monarchs of the present. Elected for long periods, many of them irremovable, they are more powerful than ministers, and, broadly speaking, from among their numbers are recruited the parliamentarians and political leaders of today." *Ibid.,* pp. 299-300.

This mixture of envy and suspicion, wrapped in patriotic insinuation, is characteristic of Stresemann's utterances about Adenauer. See, for example, his allusion to Adenauer in a speech before the Central Committee of his party, February 26, 1929: "There is a whisper going through the land of illegal efforts to replace the Constitution by a dictatorship and so forth. Notwithstanding the cordial relations maintained by the Lord Mayor of Cologne with the great Powers of Europe which enjoy that form of government, I believe that we are still very far from Fascism." *Ibid.,* vol. III, p. 432.

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Lord D'Abernon " with whom I also discussed Adenauer and his position on foreign policy, and who told me that during the Ruhr struggle Adenauer, after all, had taken an entirely different position from now." [53] For the following day, May 18, Stresemann's Papers contain a " confidential news report ", which said:

> During his brief stay in Berlin the Cologne Lord Mayor, Adenauer, in whom certain circles put so much stock, showed in the most diverse ways that he is still the old Adenauer. It would certainly be foolish to wish to fall back on that candidacy once again. One must not forget that Adenauer has in some respects deserved well of the Rhineland, but that he has fierce enemies even there. . . . Under Adenauer's chancellorship the cabinet would have soon suffered from the gravest conflicts. . . . Adenauer is a personality that is difficult to handle and he is a definite opponent of the Locarno policy. . . . Adenauer is a man of one-sided orientation. Although his candidacy is finished for the time being, it seems important to point out these facts, because at least up till this moment, the idea still haunts many people that Adenauer is the right man for a " definitive " cabinet.[54]

These *ad personam* trivialities matter little, and insinuate rather than inform. Stresemann's worries about Adenauer's views on foreign policy are puzzling, but as long as Adenauer maintains his silence on this point, it will be impossible to render an informed judgment. A few surmises, however, may be in place. Adenauer's criticism of Locarno certainly did not spring from Francophobia or from any more generalized hostility toward the Versailles Powers. As a Rhinelander and a devout Catholic, Adenauer seems always to have viewed Germany as a part of a West European community.[55]

[53] Stresemann Papers, vol. 38, reel 3145, frame H 161483.

[54] Stresemann Papers, vol. 38, reel 3145, frames H 161481-2. According to Henry Bernhard, editor of the *Vermächtniss*, these confidential news reports were written by a journalist close to Stresemann, Wilhelm Vogel. Because of this intimacy and their frequent meetings, Bernhard believes these reports possess a " certain authenticity ". Letter to writer, July 1, 1957.

[55] Adenauer in fact hoped for a permanent and far-reaching understanding between Germany and France. At the height of the Ruhr crisis in 1923, he told Tirard, the chairman of the Allied Rhineland Commission, that French hopes of separation were doomed; " a lasting peace between France and Germany can only be attained through the establishment of a community of

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His actions as mayor of Cologne confirmed this, even under the strain of seven years of British occupation; his moving words of moderation at the end of that occupation, on January 31, 1926, attest the now-familiar mixture of statesmanship and sentiment.[56]

Adenauer may have been anti-Locarno for more parochial reasons, perhaps because Stresemann did not obtain sufficient immediate concessions for the occupied Rhineland. The allusion to the unskillful negotiating at Locarno makes this interpretation more plausible. Adenauer's remark about "the unsteady seesaw character of German foreign policy" also admits of several interpretations. The thought that comes most readily to contemporaries today, that Adenauer must have sought to condemn Stresemann's cherished tie to the East, his vigorous continuation of the so-called Rapallo line, is least persuasive. Adenauer, it would appear, did not trouble himself much about the East; to him, as indeed to most of the Europeans at the time, the important Powers were France, England and Germany, the nations tied together by the Versailles Treaty. It is far more likely that Adenauer meant the vacillating policy of toughness and compliance, of pinpricks and promises, which had characterized Germany's policy to the West. More likely still, he was referring to Germany's game of playing England against France, France against England, of seeking D'Abernon's help or enticing Briand's friendship. Adenauer probably would

economic interests between the two countries." Stresemann Papers, vol. 265, reel 3111, frames H 146621-2. Stresemann's friends were right that Adenauer had maintained close contacts with the French—but with Stresemann's knowledge, if not necessarily to his pleasure. Adenauer's forays into foreign affairs, in part imposed on him by the occupation of Cologne and the Rhineland, may have troubled Stresemann, who quite properly regarded foreign affairs as his own province.

56 "Much we have had to suffer at the harsh hands of the victor during these seven long years. Today, in this sacred hour, let us not talk of that; indeed, we want to be just; despite much that we have gone through, we want to recognize that in the political field the departing enemy has allowed fair play to prevail. Let us hope that our suffering has not been in vain, that now a truly new spirit will prevail among the peoples of Europe. The principles of law and morality, which are valid for the relations of individuals to one another, which pronounce every man free and equal and possessed of equal rights, these must in truth, and not only in words, become valid for the society of nations." *Deutscher Geschichtskalender*, pp. 209-210.

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have preferred a consistently pro-French policy. Certain it is that Adenauer had conceived no great admiration for Stresemann's foreign policy, despite the fact that (or partly because) enlightened opinion everywhere considered Stresemann a republican Bismarck. One may surmise that Adenauer's own foreign policy under Weimar would have been, as Stresemann feared, one-sided: he would have tried to attach a strong and equal Germany to a strong Western Europe —at the cost perhaps of renouncing uncertain gains in the East.

Presumably foreign policy was not the only difference between these two men. Stresemann undoubtedly mistrusted Adenauer's domestic politics as well, his fiscal extravagance, his Rhenish-Catholic loyalties, his steady collaboration with the Socialists in the Prussian Staatsrat.[57] That Adenauer was unreservedly republican, and never as closely involved with the Hohenzollern dynasty as Stresemann, was at best a matter of indifference to the latter. For all of Stresemann's unquestioned achievements for the Republic, for all his wearisome battles on behalf of political reason and responsibility within his own party, he never worked at the task of strengthening the Republic at home with the passion that he lavished on the resurgence of the Reich abroad. May it not have been important in this particular crisis that Stresemann's feelings toward the Republic, at least in the mid-twenties, were still those of an adopted son? He had been grudgingly accepted by the Republic, as was shown by his exclusion from responsible posts until 1923, and he himself continued to cherish the memory of his natural home, the Empire.[58] His most embittered foes were on the Right, as were his deepest sentiments. Time and again his party worked toward a reconcili-

[57] His pique over Adenauer's collaboration with the Socialists was expressed in his letter to Jarres (*cf. infra,* footnote 59). Complaining that the collaboration of German Nationalists and People's Party in the Prussian Staatsrat had not brought the Center closer to the Right, he remarked that "the election of the president showed that there, too, Center and Socialists collaborated, for the election of Adenauer was pushed through, and the position of the presidency was denied to the larger party, the *Arbeitsgemeinschaft* [German Nationalists and People's Party]." *Vermächtniss,* vol. II, pp. 415-416.

[58] In his address to the Party Congress on October 2, 1926, he referred to the "fine phrase about the old Germany, which we love, and the new Germany, for which we live." *Ibid.,* vol. III, p. 81.

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ation with the German Nationalists, and a few weeks after Adenauer's candidacy he corresponded with the German Nationalists about the advantages and disadvantages of an amalgamation of the two parties.[59] To be sure, he hotly refused to surrender to the Nationalists the National Liberal tradition, the legacy of Bassermann and Bennigsen, but this tradition, after all, was not only his personal commitment but his sole political stock in trade, indeed his *raison d'être* as a party leader. Stresemann, true to the German belief in the *Primat der Aussenpolitik,* strengthened the Republic's diplomatic defenses, hoping that greater external power would solidify the inner strength of the Reich.[60] Adenauer, on the other hand, seems to have believed then, as he most assuredly did twenty years later, that the power and well-being of Germany depended at least as much on an active, stable political society at home.[61]

[59] On July 5, 1926, Jarres and Gayl, the co-chairmen of the *Arbeitsgemeinschaft* in the Prussian Staatsrat, suggested in an open appeal to both parties that this formal collaboration of the two parties should be extended to other legislative bodies. Stresemann refused, but in his letter to Jarres of July 30, 1926, he wrote that such a move would be a tactical mistake as well: it would only lead to closer collaboration of the Left and to a permanent Left-Center government. If, on the other hand, one did nothing, then the Socialists would become more radical, hence totally isolated, and an effective Right-wing bourgeois government would become inevitable. *Ibid.,* vol. II, pp. 412-416. This, of course, was clearly the opposite of Adenauer's hope (*cf. supra,* p. 19) to lead the Socialists out of isolation.

[60] There is something pathetic in Stresemann's weary realization, shortly before his death, that he had failed to mold his party according to his original expectation. See the remarkable letter to his party friend, Professor Kahl, March 13, 1929, in which he discussed the possibility of withdrawing from the party he himself had organized. "We are moreover no longer a party of ideological principle, rather we are becoming more and more a purely industrial party. . . . The *Stammtische,* which in our party speak the loudest, shout their approval most heartily for those who talk like Seldte and Duesterberg [the leaders of the *Stahlhelm*]. I wanted to be a bridge between the old and the new Germany." *Ibid.,* vol. III, pp. 436-440. He had wanted to be a bridge and failed, and this perhaps describes the ultimate tragedy of Stresemann's position: he remained adrift, belonging to neither side, scorned by his old peers on one side and scornful of his new friends on the other.

[61] It could be argued that Adenauer's particular talents and predilections would have been more appropriate, if obviously less welcome, to the Germany of 1926 than to the Germany of 1949. In the former instance his conservatism could have *preserved* and *strengthened* the existing democratic institutions, whereas in the latter instance, after Germany's total defeat, he abetted the conservative desire to *restore* some of the old traditions, with results that may not always have been beneficial to German democracy.

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Our account of the May crisis of 1926 has shown, in microcosm, the many weaknesses of Weimar: the instability of governments, the depth and dogged fury of the party struggles which intensified the existing antagonisms among classes, confessions and regions, the resultant erosion of parliamentary power and the corresponding growth of extra-parliamentary and presidential authority, the mediocrity of political leadership, the endless, sterile fighting over the past, the habit of renewing the sources of dissension at every crisis. Remembering all this one may well ask whether Adenauer, as chancellor in the late 1920's, could have changed the fate of Weimar. Could any man have triumphed over such obstacles, which were not accidental or temporary, but the consequences of a long and tortured political evolution? Could he have braved the "system", could he have pitted himself against all the forces, political and spiritual, that were subverting the Republic? Even if one concedes the potential impact of a statesman, not in order to glorify the rôle of the individual but to take cognizance of an oft-repeated phenomenon in history—can one suppose that Adenauer was the right man? Can one read back into these earlier years the maturity, the active, even belligerent political intelligence of the present-day Adenauer, chastened by his people's tragedy which two decades before no man could forsee? [62]

Again: if Adenauer had successfully formed a cabinet in May 1926, could he have kept the great coalition in being, could he have cajoled the recalcitrant members of the People's Party, could he have prevented the fatal emergence of those Right-wing leaders in his own party, Prelat Kaas and Dr. Brüning, who proved so utterly indifferent to the survival of the parliamentary republic? Could he have broken or moderated the narrow selfishness of the industrialists which added so immeasurably to the economic and political burden of the depression? Could he, in short, have strengthened the republican forces everywhere and marshaled them so effectively as to ride out the storm of depression and social collapse? Much of this he undoubtedly would have

[62] Was the Churchill of the general strike in May 1926 the same leader as the Churchill of that memorable summer of 1940?

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tried, if only because this supremely able and self-assured politician would have sought to consolidate his own power. And much could have been achieved: the limits of intelligent statesmanship were never approached under Weimar, and the reservoir of democratic power was never adequately tapped. Chance and the unrelieved mediocrity of its leaders had a far greater impact on the final collapse of Weimar than is usually acknowledged.

Whether Adenauer would have succeeded, no man can tell. In the process of trying he would have afforded Weimar a period of creative consolidation; and a prolonged chancellorship of Adenauer under the presidency of Hindenburg, in itself a vigorous combination of austere Protestantism and Catholicism, might have endowed Weimar with that authoritative dignity, that proud harnessing of opposing forces, which alone could have lessened the impact of the seemingly idealistic terror movement which assailed and overwhelmed Germany a few years later. In contemplating Weimar's fate and Adenauer's candidacy one must remember that nothing is inevitable until it has happened.

FRITZ STERN

COLUMBIA UNIVERSITY

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CAPITALISM, SOCIALISM AND THE ECONOMIC THEORIES OF MAO TSE-TUNG *

IN NO single document, speech or publication are the economic theories of Mao Tse-tung neatly laid out ready for evaluation as an integrated body of thought. Instead they are scattered over a large number of official documents, speeches and publications; and at least one important aspect of a unified theory has not been formally stated anywhere at all, but nevertheless is the basis of actual practice of considerable long-range significance.

As a result, in order to appraise Mao's economic theories, it was first necessary to compile, and then construct from them, a unified general theory. Methodologically, this is sound when dealing with statements of economic means and ends as expressed by Mao or one of the lesser angels of Chinese communism, who is in effect speaking for him. This is not, however, the case where statements have not been made, and it has been necessary to observe actual practice and deduce from it the underlying theories. Inherent in this deductive procedure is the assumption that the historical results of actions were or are the desired results; and the extent to which this assumption—or modifications of it to fit particular circumstances—is incorrect may be a cause of differences between the assumed reasoning and the actual reasoning which guided the actions observed.

In this paper, where the discussion is on an aspect of Mao's theories which had been constructed on this somewhat less than solid basis, it is so noted. For the purpose of separating pure theory from the burdensome and irrelevant details of actual practice and the short-run results of such practice, place, organization and other names have not been used in the discussion.

* The author is indebted to Professor F. L. Ho of the Department of Economics of Columbia University for invaluable constructive criticism of the paper.

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Mao's Economic Theories: Description

THE END OF ECONOMIC STRATEGY

Mao's desideratum is state socialism; the means to attain it are economic evolution and revolution. The transition from "a semi-colonial, feudal, economy" to socialism is to be accomplished in two stages. The first is the "New Democracy", a period of "restricted capitalism" for an originally unstated number of years but which *ex post facto* appears to have been 1949-55, a period long enough to: increase significantly industrial and agricultural output; improve significantly governmental monetary and fiscal affairs, and transportation and communication facilities; and lessen significantly China's dependence on foreign trade and economic assistance. When the nation's industrial strength had been built up to larger, more concentrated, more manageable proportions, the second stage of state socialism along Marxist-Leninist lines, including collectivization of agriculture, was then to be introduced; and apparently was introduced in 1955.

"The development of capitalism is not only an advance, but also an unavoidable process," said Mao in 1945.[1] Industrialization was (and still is) considered not only an economic but also a political prerequisite to socialism. China was (and still is) primarily agricultural; "the peasants form eighty per cent of the population and bear the main burden of the national economy of China today" (1945).[2] Of the 20 per cent who do not depend on the soil for their livelihood, only "two and a half to three million [are] modern industrial workers, twelve million town handicraftsmen and hired laborers."[3] This numerically small, politically weak, "industrial proletariat" was considered incapable of enforcing confiscation and collectivization of the land on the relatively large numbers who owned all or part of the land they tilled. This proletariat had to be made much stronger and the peasantry made much weaker politically before this was possible.

[1] Mao Tse-tung, *Fight for a New China* (New York, 1945), p. 38.

[2] Mao, "The Chinese Revolution and the Communist Party of China", Committee for a Democratic Far Eastern Policy (New York, n.d., mimeo.), p. 14.

[3] *Ibid.* p. 15.

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Industrialization, with its attendant transfer of the population from the land to the cities, was the answer to this problem. The fewer people on the land, the larger the size of farms; and the larger, more concentrated and therefore more easily led and managed the "industrial proletariat", the easier would be enactment and enforcement of the collectivization process.

Both industrialization and socialization were to be and are being conducted on a regional basis. The natural resources of each economic-geographic region are being developed, and industrial and agricultural output expanded as much and as rapidly as possible without regard for the slower progress of other such areas. Thus, while industry and agriculture may be relatively "primitive" in development (i.e., capitalistically organized), in some regions, in others they are so mechanized, so well developed and so closely organized that socialization, including collectivization of agriculture, can be and is being undertaken.[4]

ECONOMIC TACTICS: STRUCTURE OF THE ECONOMY OF THE "NEW DEMOCRACY", 1949-57

1. *Economic Topography*

With respect to ownership, the economy of the "New Democracy" consists of three sectors:

a. The nationalized sector, the commanding heights of the economy. Said Mao as early as 1940:

> Enterprises, foreign or Chinese, which possess a monopoly character or which due to their big scale are beyond the individual's power to establish, such as banks, railways, aviation companies, etc. shall be run and managed by the state, so that private capital cannot manipulate the life of the people. Such is the main principle of capital restriction.[5]

b. The private sector, the plains of the economy. These consist of small industrial and commercial firms, which have relatively few employees.

[4] Nowhere in Mao's writings or in the publications of the Chinese Communist party or members of the party is the thesis of regional socialization stated. However, stated or not, this is what seems to be taking place.

[5] Mao, *China's New Democracy* (New York, 1945), p. 29.

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c. The coöperative sector, the small hills of the economy, which are largely but not exclusively associated with agriculture (i.e., agricultural producers, credit and marketing coöperatives, labor "mutual aid" teams).

Being socialist and "semi-socialist in nature", the nationalized and coöperative sectors are being fostered through preferential treatment.

The state's function has been to coördinate and regulate the activities of all enterprises—large and small, whether state, coöperative, individual peasant, private capitalist or joint state-private capitalist-owned [6]—in the spheres of operation, supply of raw materials, markets, labor, technical equipment, financial policies, and trade, so that all units in the economy, led by the large and/or vital state-owned enterprises, contribute to the rapid industrialization of China.

Production theory in the "New Democracy" is simple: Maximize it. In order to accomplish this, optimum allocation of the resources of the economy is being stressed. Irrational high-cost operating methods, "lack of planning, blind competition among enterprises in the same trade and . . . disharmony in supply and demand between various places" are in the process of elimination. The state will continue to purchase all industrial and agricultural surpluses, and place orders with private firms experiencing sales difficulties. To insure adequate knowledge for intelligent decisions by state officials, as well as to increase tax yields, all firms are required to submit an inventory list of all assets and liabilities, keep a journal and ledger, and provide vouchers for all transactions.

The capital for this "restricted capitalism" is to come from "the accumulated wealth of the Chinese people," wrote Mao Tse-tung in 1945. And he seems to have meant just that. So-called bureaucratic and monopolistic capital, having been accumulated at the expense and impoverish-

[6] "State-capitalist" enterprises owned jointly by the government and private entrepreneurs are treated herein as nationalized enterprises, because even with respect to daily operations, as well as basic policies, the capitalist owners are subject to unusually detailed state direction. See "Ch'en Yun Speaks on Industry and Commerce at September 20th Meeting of Party Congress", *Survey of China Mainland Press*, No. 1375, Hongkong, September 25, 1956, pp. 4-5; and Chao Ching-lun, "Taking the Plunge", *People's China*, No. 19, October 1, 1956 pp. 26-31.

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ment of the people, according to Mao, is in reality the stolen wealth of the people and has therefore been confiscated. "The People's Government shall adopt the measures necessary to . . . facilitate remittances from overseas Chinese . . . into industry and other productive enterprises"; [7] these measures have included seizure and threats of bodily harm and/or death to families with relatives overseas until a series of ransoms, usually the life savings of the emigrants, has been paid.[8] "Idle . . . [as well as] commercial capital, which is not beneficial to the national welfare", has been channeled into production by means of heavy business taxes, "donations" to various causes, "savings deposits" campaigns, "purchase of livestock insurance" campaigns, "voluntary purchases" of "Victory Bonds", and by such "consumption" taxes as taxes on kitchen chimneys, lime kilns, goods in transit, ancestral shrines, sale of livestock and poultry, and "birth of a male child".[9]

For those who still had "idle capital" after their taxes and "donations" had been paid, there was the lure of joint state-private capitalist corporations, which sometimes offered guaranteed dividend payments on holdings even if the firm were to make no profits.[10] And despite the Chinese Communist party's long history of vitriolic invectives against "foreign imperialism", Mao has stated that he would "welcome foreign investments if such are beneficial to China's economy and are made in accordance with China's laws." [11] Despite these assurances, the climate has not been conducive to private investment in Communist China, as indicated in Table I.

As Table 1 shows, since 1949 the socialist and semi-socialist firms have accounted for an increasingly larger share of total industrial production at the expense of the privately

[7] Mao, *On People's Democratic Rule* (New York, 1950), p. 22.

[8] See "Chinese Extortion Racket", *Life*, December 3, 1951, pp. 57-58.

[9] H. R. Lieberman, "Reds' Money Drive Preoccupies China", *New York Times*, October 29, 1951, p. 4.

[10] See Ho Shan-hui, "What's Happening in Former Private Firms", *China Reconstructs*, vol. VI, No. 2, February 1957, pp. 4-5.

[11] Mao, *Fight for a New China*, p. 62.

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TABLE 1 [12]

PROPORTIONS OF PUBLIC AND PRIVATE TOTAL INDUSTRIAL PRODUCTION IN CHINA, 1949-55

	1949	*1952*	*1955*
	%	%	%
State firms	26.3	41.5	51.3
Coöperative firms	0.4	3.2	6.3
Joint-state firms	1.6	4.0	13.1
Privately owned firms	48.7	30.7	13.2
Individual handicraftsmen	23.0	20.6	16.1
	100.0	100.0	100.0

owned firms, and, at this writing, there seem to be no signs of the trend being reversed. Quite the contrary; there is evidence to indicate that, if anything, it will be accelerated.[13] The situation is the same in commerce.

As Table 2 indicates, while the socialistically and semi-socialistically oriented firms increased in importance in both the wholesale and retail trades during 1949-55 at the expense of the capitalistically oriented ones, their most notable gains were made in the wholesale area, where the firms are generally fewer in number and larger in size than in retail trade.

TABLE 2 [14]

PROPORTIONS OF PUBLIC AND PRIVATE SALES OF COMMODITIES IN CHINA, 1950-55

	1950		*1952*		*1955*	
	Wholesale	*Retail*	*Wholesale*	*Retail*	*Wholesale*	*Retail*
	%	%	%	%	%	%
State firms	23.2	7.9	60.5	15.8	82.2	27.0
Coöperative firms	0.6	4.9	2.7	18.3	12.6	30.5
State-capitalist firms	0.1	0.2	0.5	0.3	0.8	12.7
Privately owned firms and peasant trading	76.1	87.0	36.3	65.6	4.4	29.8
	100.0	100.0	100.0	100.0	100.0	100.0

12 "Statistical Tables on the National Economy of Communist China", *Current Background*, No. 429, Hongkong, November 26, 1956, p. 3.

13 See Ch'en Yun, "Market Conditions in China Today", *Current Background*, No. 442, March 15, 1957, pp. 1-7.

14 *Ibid.*, No. 429, pp. 23, 25.

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This trend also seems unlikely to be reversed.[15] From the very beginning, in both industry and commerce, Mao's "New Democracy" has headed for socialism.

2. *Agriculture*

This is not so in agriculture. For reasons stated above, Mao's agrarian policies were relatively moderate in nature during 1949-55. Partial land redistribution and subsequent maintenance of the principle of private property characterized the "take-over" of this important segment of China's economy until 1955.[16] The land, farm implements, draft animals, and surplus homes of landlords[17] above the per capita share in each *hsiang* (basic administrative unit embodying several villages) were confiscated and distributed among the poor and landless tenants of the *hsiang*. Slightly better but substantially similar treatment was accorded ancestral shrines, churches, and other places of worship. However, in line with the "New Democracy's" emphasis on maximization of physical output, industrial and commercial enterprises belonging to landlords and religious organizations located in rural areas were retained by the latter. That inexperienced farm hands, however eager, could not turn out the desired work was the reasoning behind this. On the other hand, the rural holdings of urban industrial and commercial firms not essential to their enterprises were subject to confiscation.

Measures taken to increase agricultural output included:

[15] In September 1956, so-called "free markets" were organized, mainly at the retail level. As the Chinese Communists themselves point out, "China's free market is essentially different from the capitalist free market. Capitalists play no part in this market in the first place. . . . All the principal commodities are under state control and cannot be traded in freely." Chen Hsing, "New China's Free Market", *People's China*, No. 8, April 16, 1957, p. 16 and *passim*.

[16] See Sidney Klein, "The Pattern of Land Tenure Reform in East Asia after World War II", pp. 255-369, *passim*, typewritten doctoral dissertation, Economics Department, Columbia University, 1957.

[17] Defined generally as persons who own land but who do not engage in labor; individuals whose incomes come chiefly from "exploitation" in the form of land rent. See "Decisions Concerning the Differentiation of Class Status in the Countryside", *Supplement to People's China*, October 16, 1950, *passim*.

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a. Exemption of the land of the "rich peasants"[18]—the "kulaks" of China—from confiscation and redistribution. Their holdings, larger, more efficiently sized and managed and therefore more productive than those of poor and middle peasants, were not touched so long as the land rented out did not exceed the area of the land they and their hired workers tilled.

b. In each "reformed" area, confiscations and redistributions were scheduled for post-harvest time, after the crops were safely in. New owners were required to pay their predecessors for all fertilization and cultivation accomplished since reaping of the last crop. Guarantees were made by Mao's régime that all post-reform property rights acquired, including sales, purchases and rentals, would not be impaired.

c. "Mutual Aid Teams" and "Agricultural Producers Co-operatives" were used to mobilize and economize on the use of labor power in large undertakings, such as land reclamation and irrigation projects. This also served as an introduction to the idea of collectivization.

d. Heavily increased emphasis was placed on research projects in connection with agricultural mechanization, water conservation, crop insect control, agricultural implement manufacturing, land reclamation, and crop rotation.

In late 1955 and early 1956, the long-heralded collectivization movement began.[19] Mao personally ordered that by the end of 1957 there were to be 1,300,000 agricultural producers coöperatives with over 250,000,000 members in Communist China, which is to say that at least half of the rural population was to be in such organizations.[20] These agricultural producers coöperatives were to consist of two types, those in the "lower stage" of socialist development and

18 Defined generally as persons who own and work their own land but whose "exploitation" of others consists in hiring long-term labor. See *ibid.*

19 For a detailed treatment of the history of this collectivization effort, see Sidney Klein, "The Land Reform Policies of the Chinese Communist Party 1928-52: An Economic Analysis and Evaluation" (typewritten, East Asian Institute, Columbia University, 1954).

20 See Mao, "On the Cooperativization of Agriculture", *Current Background*, No. 364, translated by U. S. Consul General, October 19, 1955, p. 3 (mimeo.).

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those in the "higher stage". The coöperatives in the lower stage were to be only semi-socialist in character. The cooperative as a unit was to own only a part of the means of production; the coöperative members, as individuals, were to retain ownership of the land and other means of production they had turned over to the organization for common use. They were to receive dividends for these services.

In time, each coöperative was expected to evolve into the higher stage, by which time it would be completely socialist in character. All the means of production would then have been turned into communal property, dividends based on property ownership would then have disappeared, and all incomes being earned would then be derived solely from labor. In the higher stage of development, coöperative members might own only "small plots of garden land, odd trees, poultry, livestock, small tools, and tools required for family side occupation."[21] In essence, the higher stage agricultural producers coöperatives were simply collective farms, similar to those organized in Soviet Russia in the late 1920's. As a result of intensive efforts by the Chinese Communist party cadres charged with the responsibility for this movement, 96.1 per cent of all Chinese peasant households were in such producers coöperatives by December 1956; and of this group, seven eighths were in units of the higher type (i.e., collective farms).[22] As of this writing, Chinese agriculture too is on the road to socialism.

3. *Labor*

In sharp contrast to the moderate policies initially pursued in the agricultural sector of the economy, trade unions in the "New Democracy" became primarily organs of the state and secondarily organs of the workers in individual firms as early as 1950.[23] In addition to the normal functions of undertaking collective agreements with management and

[21] State Council, "Draft Model Regulations for Agricultural Producers Cooperatives", *Current Background*, No. 369, translated by U. S. Consul General, November 25, 1955, p. 4, Art. 3 (mimeo.).

[22] "Agricultural Co-operation in 1956", *People's China*, No. 2, January 16, 1957, p. 44.

[23] "The Trade Union Law of People's Republic of China", *Supplement to People's China*, July 1950, *passim*.

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carrying out measures to improve the social and cultural life of members, they acquired the following overriding, more important, and therefore primary functions:

a. To educate and organize the masses of workers and staff members to support the laws of the state, to carry out the policies of the state, and to consolidate the power of the state, led by the " working class ".

b. To educate and organize the masses of workers and staff members to establish a " new attitude " toward labor, to observe labor discipline, to organize labor emulation campaigns, and other production movements in order to insure the fulfillment of productive plans.

c. To protect public property from losses due to corruption, waste, bureaucracy and sabotage.

d. To promote policies beneficial to production and to oppose violations of government decrees and actions detrimental to production.

Since 1950, all firm trade unions have been subordinate to trade unions at higher levels roughly comparable to state administrative units. At the top of this structure is a Federation of Trade Unions which examines and ratifies the constitutions and by-laws of all trade unions and registers them with the appropriate local state agencies. To aid union officials in the vital work of policing management (both public and private) and labor, so as to insure their contribution to the maximization of production, trade unions have been granted the same preferential treatment in the use of buildings (including office furnishings), postal, telegraphic, telephone, railway, motor road and navigation facilities, as is enjoyed by government institutions at the corresponding levels.

While the right to strike has not been specifically prohibited, neither has it been specifically affirmed. Work stoppages are or are not considered actions detrimental to production, depending on the situation.

4. *Unleashed Production Forces*

In the " New Democracy ", the productive powers of the Army and of women have been brought into play on a large scale, and the productive power of the entire labor force,

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male and female, in and out of the Army, is being increased through technical, industrial and commercial education.

When not engaged in purely military activities, the Army contributes to industrialization by means of agriculture, stock raising, fishing, irrigation work, handicraft production, and whatever industrial and transportation enterprises the situation of each unit may permit. Purely commercial transactions, however, are prohibited. Of the earnings from these activities, one fifth has been required to be reinvested and another one fifth or more has gone to the state as taxes. Optimum allocation and use of resources are practiced in Army productive endeavors as in the civilian components of the economy.[24] Economic activity is a primary and productive function of the Army when not engaged in military activities, and not a secondary or time-killing one.

Another hitherto latent productive force that has been activated is that of the women, young and old, married and single. They have been given complete economic independence and are encouraged to lead active lives in industry, commerce and agriculture on the basis of complete equality with men. In the agrarian reform they received an equal share in the land; in industry and commerce they are supposed to receive equal pay for equal work. Married women have been given equal legal rights in the possession and management of family property, which includes their earnings. In divorce, women may retain such property as belonged to them prior to marriage.[25]

To optimize allocation and use of resources, wherever possible women are replacing men or being trained to replace men, so that the latter can immediately, or in an emergency, be shifted to strictly male work. In industry, maternity privileges and welfare facilities are being provided for working expectant mothers and mothers.

Everyone, male and female, civilian and soldier, is expected to devote at least part of his time to learning management or production techniques in industry, commerce or agriculture, so as to maximize his contribution to economic

[24] "Ch'en Yun Speaks on Industry and Commerce", *loc. cit.*, pp. 5, 6.

[25] "Marriage Law of People's Republic of China", *People's China*, June 16, 1950, *passim*.

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development in the "New Democracy". Schools have been established at all levels and in all segments of the economy.

For the top of the economic structure, there are universities to train intellectuals of worker and peasant origin for responsible positions in the gigantic industrialization program. Full-time courses for two to four years give instruction in economics, planned economy, finance and credit, trade coöperatives, factory administration, law, and foreign affairs, in addition to other courses of a noneconomic nature.

For the industrial workers, technicians, and lower-level industrial office personnel of national enterprises and institutions, again of worker and peasant origin, there are Worker and Peasant Middle Schools, Worker and Peasant Schools for Cultural Training, and Worker Study Groups, which give technical and managerial as well as cultural training on both full- and half-time bases, during on-duty and off-duty time. These specialist-producing courses are three to five years in length, depending on individual circumstances. If conditions permit, instruction is given in classrooms; if not, in dining rooms, dormitories, workshops, warehouses, and, where necessary, in mine pit heads. As a minimum, all of the "working class" is to be made literate and acquire a working knowledge of elementary arithmetic. Universal elementary education is compulsory.

Among peasants, universal literacy is being accomplished by the establishment of all-year-around, part-time schools, "winter study groups", "paddy-field reading circles", "*kang*[26] reading circles", and other flexible forms of peasant education. They are intended as an aid to production, and are canceled only when work conditions require it.

5. *Fundamental Relations*

In the pursuit of maximized industrial and agricultural production, profitable frictionless intercourse between labor and management, urban and rural areas, and the "New Democracy" and foreign states is not only desirable but absolutely necessary. To neglect any one of these would result in less than optimum allocation of resources. Therefore:

[26] A large clay bed in Chinese homes which in winter is heated by an oven beneath it and warms the whole room. Work and sleeping arrangements are concentrated around it.

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a. With respect to the terms of trade between labor and capital: [27]

(1) While the length of the legal work day is eight to ten hours, in both publicly and privately owned enterprises, the hours of labor have been altered to fit changed conditions.

(2) Minimum wages have been fixed with due regard for the traditions and special conditions in different localities and trades.

(3) Labor insurance is gradually being established.

(4) Juvenile and female labor is receiving "special consideration".

(5) Industrial firms are inspected and safety devices and sanitary facilities are being developed and/or improved.

(6) As a setoff against the above, management is receiving the benefit of a "new attitude" toward production on the part of labor. This is taking the form of tighter labor discipline, labor emulation (Stakhanovite-like) campaigns, reduction of costs due to waste, bureaucracy, corruption or inefficiency, and other production-increasing activities.

To insure compliance with this program of mutual assistance, in state-owned enterprises, factory administrative committees were set up under the leadership of the factory managers. In privately owned firms, collective contracts were signed by the employers and the trade union representing the workers and other employees. The trade union is held responsible for carrying out the production-increasing policies of the state.

b. With respect to the terms of trade between China and foreign states:

(1) Foreign investments and loans, while necessary for the economic development of the "New Democracy", are not being sought, according to Mao, where it is believed the terms are or would be unfavorable. Mao claims to seek only those foreign investments and loans which would contribute to the development of the economy. However, the evidence available indicates that in actual practice these principles have tended to conflict with each other, and that the first principle has given way to the second. Apparently, consid-

[27] See Liu Tzu-chiu, "Wage Reform in China", *People's China*, No. 20, October 16, 1956, pp. 13-16.

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erable trade with Soviet Russia has taken place which has contributed greatly to the development of China's economy but which has been conducted on terms very unfavorable to her. Communist China is now in the process of rectifying this.[28]

(2) The circulation of foreign currency is prohibited. The purchase and sale of foreign exchange, foreign currency, gold and silver is handled by the state through its banks. Foreign financial enterprises operate in accordance with state laws and are subject to state supervision and direction.

(3) The bulk of foreign trade takes place through State Trading Corporations, especially organized for this purpose. Such private capital as has been used in foreign trade has been under strict supervision.

Mao's Economic Theories: Appraisal

It is to be noted immediately that the *modus operandi* prescribed for the "New Democracy" during 1949-55, which Mao calls "restricted capitalism", was in fact a mixed economy weighted heavily on the socialist side—so much so that attainment of state socialism following the "New Democracy", relative to attainment of the "New Democracy" following pure capitalism, was mere evolution rather than revolution.

The question can even be raised whether or not it was a mixed economy or actually outright state socialism, up to late 1955, for the owners and managers of privately owned firms had few if any of the functions and options of entrepreneurs as they are known in classical economic theory.

The state of the "New Democracy" had taken it upon itself to eliminate irrational high-cost operations and competition among firms in the same industry, and to regulate and coördinate the operations, supplies of raw materials, markets, labor, and technical equipment of private firms. While domestic free trade prevailed under the general economic plan of the state, commercial transactions which could "disturb the market" were *verboten*. What then was the function of

[28] See "Peiping Seeking to Build up Ties with Europeans", *New York Times*, June 10, 1957, p. 1. For an excellent summary of earlier developments, see Richard L. Walker, *China under Communism* (New Haven, 1955), pp. 271-300.

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entrepreneurs? Basically, it consisted of compliance with state directives. Practically, if not legally, they were employees of the state—employees of a higher and more indirect order perhaps, but nevertheless employees. Since the taxation policy of the state was based on the principle of "insuring supply for the Revolutionary War . . . and the needs of national construction," it is probable that the profits of entrepreneurs after taxes were merely the minimum or subsistence wages of management.[29]

Labor unions in the "New Democracy" also had (and still have) a position different from that in capitalist and most mixed economies. Their main functions were not and are not to represent the workers in intercourse and/or conflict with management, but rather, in publicly owned firms, to represent management (i.e., the state) in intercourse and/or conflict with the workers; and, in the case of private capitalist firms, to represent the state to both groups. Trade-union officials were primarily interested in carrying out the policies of the state, rather than in maximizing the welfare of workers or employers, as is the case in independent and company unions, respectively. In the event that maximization of production and workers' welfare ran counter to each other, the former was to prevail.

This has many if not all of the attributes of socialized labor, however "voluntary" it all may appear to have been by virtue of the "decisions" of trade-union officials, and the output of individual "emulators". As long as state policies came first and workers' welfare second, as long as there was an absence of bargaining over wage rates or other conditions of work, and instead there was a system of government "coordination" of labor supply with management, and as long as trade unions were organized along the lines of govern-

[29] That entrepreneurs were making profits is a theoretical if not an actual certainty. Since enterprises were being channeled by the state into productive undertakings in which competition and irrational high-cost operations were being eliminated, and in which labor, raw materials, and technical problems were being solved through "coördination" by the omnipotent state, how could it have been otherwise? That the state, while guaranteeing the entrepreneurs profits on the one hand, was taking them away with the other through taxation is likewise a theoretical certainty. It would be most illogical for a semi-socialist state headed for complete socialism to fatten capitalists for anything else except economic slaughter. To do otherwise would encourage what Lenin would describe as "recrudescent capitalism".

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ment administrative agencies, and had the job of policing labor as well as management, labor cannot be said to have been free. Nor is it free today.

Both labor and capital had positions in the "New Democracy" during 1949-55 very different from those in the mixed economy of Great Britain. However, in spite of these differences, the "New Democracy" must still be considered to have been a mixed economy. Nominally, if not in fact, a private sector of the economy did exist, and labor unions did have some functions normally found in independent unions in capitalist countries, and, most important of all, agriculture had not yet been fully collectivized. The "New Democracy" during 1949-55 came very close to state socialism, but did not meet all the requirements. Needless to note, economic organization in China since 1955 is accurately described as socialistic. With less than 4 per cent of the peasants outside the collectivist apparatus, with less than 30 per cent of total industrial production, less than 5 per cent of total wholesale trade and less than 30 per cent of total retail trade accounted for by privately owned firms which employ one or more persons,[30] it is difficult to describe it as otherwise.

From the foregoing, it would seem that Mao has borrowed much from Marx and Lenin. Such is the case, and he and his disciples have iterated it on numerous occasions. Mao believes that

> The *History of the Communist Party of the Soviet Union* (Bolshevik) constitutes the highest synthesis and summation of the world Communist movement during the last one hundred years. It is the model of unity of theory and practice and it is the only perfect model in the entire world. By seeing how Lenin and Stalin interlinked the universal truths of Marxism-Leninism with the concrete practice of the Soviet Revolution, and in this way developed Marxism, we can know how our work should be done in China.[31]

[30] "Ch'en Yun Speaks on Industry and Commerce", *loc. cit.*, p. 3.

[31] Mao, "Reform Our Study", as quoted by Chen Po-ta, "Stalin and the Chinese Revolution", *700 Millions for Peace and Democracy* (Peking, 1950), p. 678. See also Mao, *On People's Democratic Dictatorship* (London, 1950), pp. 36-38, and Ping Chen, "The Victory of Marxism-Leninism in China", *People's China*, July 1, 1951, *passim*.

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Marx's contributions consisted of: (a) the thought that new higher productive relationships never come into being before the material conditions for their existence have been brought to maturity in the old ones; [32] and (b) the phrase, "the revolutionary dictatorship of the proletariat." [33]

Lenin seized both Marx's thought and phrase and expanded and expounded them. In April 1917, he noted that "The party of the proletariat cannot by any means make it its aim to introduce Socialism in a country of small peasantry as long as the overwhelming majority of the population has not realized the necessity of a Socialist Revolution." [34]

He believed that the transition from capitalism to communism forms a whole historical epoch. And, in fact, a mixed economy characterized the first eight months of Soviet Russia's existence. The banks, transportation system, foreign trade, and large industries were nationalized while (following land reform) agriculture, the internal distribution system, and small industrial plants were left in private hands. Because of threats from within (the White Russians) and without (the Germans and some of the Allies), the Communists took complete control of the economy. War communism during 1918-21 was a strongly centralized socialistic economy, characterized by excessive red tape and technical and economic inefficiency. Grain above the minimum needed by the peasant families was forcibly seized and rationed. Manufactured goods were likewise rationed. As a result, both agricultural and industrial output fell sharply; total industrial production in 1920 was less than one third of the 1917 level, while food production in 1920 was about one half that of 1917.[35] Not until after the mixed economy

[32] Karl Marx, "A Contribution to the Critique of Political Economy", in R. N. C. Hunt, *The Theory and Practice of Communism* (New York, 1951), pp. 70-71.

[33] Marx, *Critique of the Gotha Programme* (New York, 1938), p. 18.

[34] N. Lenin, "The Tasks of the Proletariat in Our Revolution", *Collected Works of V. I. Lenin*, vol. 20, Book I (London, 1929), p. 144. See also Lenin, *The State and Revolution*, in E. Burns (ed.), *A Handbook of Marxism* (New York, n.d.), pp. 740-59; and V. I. Ulianov (N. Lenin), *The Proletarian Revolution and Kautsky the Renegade* (London, n.d.), pp. 36-37.

[35] Alexander Baykov, *The Development of the Soviet Economic System* (Cambridge and New York, 1946), p. 23, Table 2.

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known as the "New Economic Policy" was instituted in 1921 did industrial and agricultural production rise to satisfactory levels. "Control, supervision, [and] accounting" were the principal security measures against "recrudescent capitalism" advocated and enforced by Lenin in the transition period. These included nationalization of large commercial firms, establishment of State Trading Organizations in rural areas, credit control at State Banks, and price controls.

Lenin's contributions to Mao's "New Democracy" were therefore: (a) the necessity of industrializing a primarily agricultural nation before introducing socialism; [36] (b) the necessity of a transition period in which to accomplish this; [37] and (c) the necessity for and basic methods of "coördination and regulation" (i.e., "Control, supervision, accounting"). To Mao, the "New Democracy" during 1949-55 was to be to the economic history of Communist China what the New Economic Policy during 1921-27 was to Lenin and to Soviet Russia.

Stalin's contributions to "how [Mao's] work should be done in China" were primarily in the field of political rather than economic affairs. It was under Stalin and not Lenin that Soviet Russia was industrialized, and the "small peasantry" collectivized. China was and is too technologically primitive, and, from the Communist viewpoint, too politically immature, for the economic lessons of this period to be applied. China is still in the "Lenin" (industrially primitive) phase of march toward socialism. Thus far, Stalin's political dicta of "divide and conquer" and "infiltrate and conquer" have been of greater assistance to Mao.[38]

[36] It is interesting to note that Professor Schumpeter believed that as industrialized as the United States was in 1932, as concentrated was control of the means of production, and as much unemployment and social unrest as there was at that time, the United States was still unprepared to accept peaceful socialization. See J. A. Schumpeter, *Capitalism, Socialism, and Democracy* (New York, 1942), pp. 223-25.

[37] Most proponents of socialism seem to believe in the necessity for a transition period. For a minority viewpoint, however, see Oscar Lange and F. M. Taylor, *On the Economic Theory of Socialism* (Minneapolis, 1938), pp. 121-29.

[38] Chen Po-ta, *loc. cit., passim.*

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In retrospect, as Mao and his spokesmen claim, the economy of the "New Democracy" was merely the application and adaptation of Marxism-Leninism to China. It was in general nothing new. A notable exception to this generalization is the extension of the "gradual transition" concept into space as well as time. Nowhere in the writings of Marx, Lenin or Stalin (or for that matter, so far as I can determine, in the writings of Mao or of his subordinates) was this idea expressed. It merely was and is still being done.

This notion has all the elements of a new separate theory rather than the mere application of an old one. Its essence seems to be: in a country where there are sharply defined economic-geographic regions, some regions—because of superior natural resources, favorable cultural or political climates, or other favorable objective facts—can mature industrially more rapidly than other regions, and thus can and should be socialized immediately without waiting for the others to catch up, provided socialization will not have serious adverse effects on these other regions. *Regional Socialism* is an apt name for this apparently new contribution to the general theory of socialism.

These, then, are the economic theories of Mao Tse-tung. While they are, on the whole, not new, they are of great interest to social scientists in general and economists in particular.

SIDNEY KLEIN

RUTGERS UNIVERSITY

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INTERNATIONAL TRADE THEORY, COMMERCIAL POLICY AND THE ECONOMIST*

Theory is not the photograph of reality, but the criterion of the interpretation of reality."—Benedetto Croce, *History as the Story of Liberty*, p. 175.[1]

. . . experience has underlined the truth and wisdom of Edgeworth's judgment: "As I read it, protection might procure economic advantage in certain cases, if there was a Government wise enough to discriminate those cases, and strong enough to confine itself to them; but this condition is very unlikely to be fulfilled."—Gottfried Haberler, *The Theory of International Trade*, p. ix.[2]

ANALYSIS requires theory, and evaluation requires criteria. Economic elements and considerations have long been conspicuous in the structure and the determination of international relations. But foreign policy has been formulated largely by persons little versed in, and much inclined to shun, the techniques of economic analysis.

Whether the historian of foreign policy and the academician specializing in " international relations " have greater facility and interest in such analysis than has the public official is, perhaps, too delicate an inquiry to be pushed by an economist. But it may be useful to them to review very briefly the nature of international trade theory, some of its applications to questions of commercial policy, and the perspective of the economist in making these applications.[3]

* This is an elaboration of a section of my " Cordell Hull and the Defense of the Trade Agreements Program, 1933-1940 ", in Alexander DeConde, editor, *Isolation and Security: Ideas and Interests in Twentieth Century American Foreign Policy* (Durham, 1957). The material is used here by permission of the editor and the publisher. The paper has benefited from comments of C. L. Allen, N. V. Breckner, Wytze Gorter, and Ragnar Nurkse.

1 New York, 1941.

2 London, 1936.

3 When considering the use of economic analysis for purposes of, say, political-military power, the economist is in generally unfamiliar and uncongenial territory. This article is concerned with the " economics " of trade policy. A discussion so severely delimited in scope presumably will not by itself yield many positive policy proposals, but it can provide the basis of an understanding which will permit the avoidance of certain sorts of major policy errors.

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I

The prospect of *mutual gains* to the parties in an exchange of goods, services and claims is the major motivation of market-oriented economic activity, and the conclusion that such mutual gains are possible under certain typical circumstances is the crux of economic theory. When two bargaining units place different relative valuations on things they possess, there is a range of exchange ratios, or prices, within which trade will benefit each unit. Each party is made better off by giving up some of what it values relatively little in exchange for things which it values relatively highly. Similarly, when two communities have adjusted their respective patterns of consumption and production in such a fashion as to result in different sets of relative prices, they can trade to the profit of each.

With the emergent possibility of trade between these parties, it is a short step to the principle that specialization in production, partial or complete, can *increase the total of goods and services* available for trade and consumption. The so-called law of "comparative advantage" holds that a producing unit should specialize in those commodities in which it is *relatively* most efficient. The requirement is not that each trader be absolutely more efficient in the production of its export commodities and absolutely less efficient in the production of its import commodities. It is necessary only that the *degree* of its superiority or inferiority in production differ from commodity to commodity and that it specialize in those goods where its degree of superiority is greatest or its degree of inferiority is least.[4]

For a discussion of United States foreign economic policy in a world of cold war, see Jacob Viner, "The Role of the United States in the World Economy", in R. Lekachman, editor, *National Policy for Economic Welfare at Home and Abroad* (Garden City, 1955), pp. 175-210. For excellent surveys of international trade and finance theory, see L. A. Metzler, "The Theory of International Trade", in H. S. Ellis, editor, *A Survey of Contemporary Economics*, vol. I (Philadelphia, 1948), pp. 210-254; N. S. Buchanan, "International Investment", in B. F. Haley, editor, *ibid.*, vol. II (Homewood, 1952), pp. 307-350; Gottfried Haberler, "A Survey of International Trade Theory", *Special Papers in International Economics* (Princeton, 1955).

[4] Much of the preceding two paragraphs can be illustrated simply with a two-country, two-commodity model. Let the United States and the United Kingdom prices of commodities X and Y be as follows:

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With each community specializing according to the principle of comparative advantage and exchanging on the basis of such production specialization, each tends, first, to maximize desired output within the constraints of given resources and production techniques, and, second and simultaneously, to achieve the highest level of "well-being" commensurate with a given aggregate quantity and initial international distribution of goods and services.

In sum, for the simplified case of one-person economies—in which there are no issues associated with domestic income redistribution—it can be demonstrated that: (a) assuming full employment of resources and given production relations and factor (input) supplies, rational operations in perfectly com-

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U. S.	U. K.
X = $15	X = £6
Y = $12	Y = £3

One cannot, and need not, tell from the data given which country is productively superior, i.e., more efficient in physical input-output terms, in either of the commodities. For purposes of illustrating the bases of, and the gains from, trade, it is sufficient that the *ratios* differ: $15/12 \neq 6/3$ or, alternatively, $15/6 \neq 12/3$. Given these respective domestic prices; mutually beneficial, two-way trade can obtain if the rate of exchange between the dollar and the pound lies within the limits, $\$2.50 = £1$ (derived from the ratio, 15/6) and $\$4 = £1$ (derived from the ratio, 12/3).

At a rate of, say, $\$3 = £1$, X in the United Kingdom is priced at an equivalent of $18, and Y is $9. The United States would, therefore, specialize its production on, and export, X; it would import Y. With the price of X being $15 and Y the equivalent of $9, the *international* terms of trade would be 1X exchanging for 1⅔Y. By contrast, in the absence of trade, in the United States the *domestic* terms of trade would be 1X exchanging for only 1¼Y. Similarly, by foreign trade the United Kingdom must export only 1⅔Y to obtain 1X, whereas domestically the exchange ratio requires that 2Y trade for a unit of X.

This analysis is based on the classical line of thought, stemming primarily from David Ricardo and John Stuart Mill in the first half of the nineteenth century. In the present century, theory associated with Eli Heckscher and Bertil Ohlin has attempted to "go behind" the classical comparative-advantage doctrine and explain *why* the price ratios differ. Roughly, it is held that, from region to region, (1) relative factor prices differ, primarily because of differences in relative factor supplies, and (2) different commodities require for their production different factor combinations; therefore, a region tends to export those commodities which use relatively large amounts of factors which it possesses in relative abundance and thus which are relatively cheap. Despite the claims and criticisms of Ohlin (*Interregional and International Trade* [Cambridge, 1935], esp. Appendix III), the Heckscher-Ohlin approach is more a complement to, rather than a substitute for, the classical approach.

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petitive markets will achieve a "maximum" output in the sense that it is impossible to increase the output of one commodity without sacrificing some of the output of other commodities; (b) at the same time, with production and consumption patterns which reflect different relative valuations of commodities between the two countries in the absence of trade, free and competitive trade will achieve an "optimum" distribution of some given total of commodities (which is larger than the pre-trade total) in the sense that it is impossible to increase the "well-being" of one country without decreasing the "well-being" of another country. Trade changes the allocation of productive resources, increases world production, and frees nations from the restriction of consuming only their own particular outputs. Thus we have "optimum" global distributions of alternative "maximum" national outputs.[5]

The essence of the argument for international specialization and trade, then, is that in this manner a nation may acquire more goods and services with its given resource possi-

[5] Economic "well-being" or "welfare" should be measured ideally in terms of psychic "satisfaction" or "utility". Unfortunately, the psychologists have not yet invented a "util-meter" by which we can measure absolutely the level of utility engendered by an incident. Since we cannot make an absolute or quantitative measure of one person's utility, we cannot compare the absolute level of well-being of one person with that of another. If, then, "interpersonal comparisons of utility" are impossible, how can we evaluate the desirability of a public policy? One answer commonly given is, if no one in the community is hurt by the policy and at least one person is helped, the welfare of the community is increased. But almost any policy will hurt some people. In this case, community welfare is still conceived to be increased if those who are helped can compensate those who are hurt by the full amount of their injury and still be themselves better off than they were initially.

All of this may seem a bit esoteric on the policy-making level. (*Cf.* Clair Wilcox, "Relief for Victims of Tariff Cuts", *American Economic Review*, vol. XL [December 1950], pp. 884-889.) But we may conjecture that a policy is "good" if it results either in more goods and services available to the community with the use of given inputs or in acquiring the same quantity of goods and services for less real cost. For a technical demonstration that, on this criterion, some trade—not necessarily free trade—is desirable, see P. A. Samuelson, "The Gains from International Trade", *Canadian Journal of Economics and Political Science*, vol. V (May 1939), pp. 195-205, reprinted in H. S. Ellis and L. A. Metzler, editors, *Readings in the Theory of International Trade* (Philadelphia, 1949), pp. 239-252. For a review of the concept of economic welfare, see K. E. Boulding, "Welfare Economics", in Haley, *op. cit.*, pp. 3-11.

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bilities than would be possible by itself producing directly with domestic resources all that it consumes.

There are, however, two difficulties in concluding that free trade is the only appropriate policy for a nation—one problem inherent in all exchange and one unique to multi-person economies. First, while free exchange will result in some distribution of given products that is preferred by *both* traders to the initial distribution in the absence of trade, there is an "optimum" *range* of these alternative preferred distributions within which *further redistribution will help one party only at the expense of the other.* Free trade will benefit each of the trading partners by bringing the pattern of distribution to some point in this "optimum" range, but, once there, each trader has an incentive to garner a larger share of the gains from trade to the detriment of the other. This is unacceptable to the party being hurt; also, it is ambiguous that the world economy as such is benefited, for the gain in welfare to the one party cannot be accurately weighed against the loss to the other.[6]

Second, almost any policy affecting an economy will result in changes in the distribution of internal income, which likely will be of greater importance in the short run than over the long pull. The introduction of trade can increase the total of goods and services available to a community, but if the trade injures some members of the community, it may be impossible to judge with assurance whether the total welfare of the group has been increased.

In short, a combination of two considerations—the virtual certainty that changes in trade policy will redistribute domestic income and reapportion internationally the gains from trade, and the impossibility of interpersonal and intercommunity comparisons of utility—suggests that the introduction of free trade on the part of every country will not necessarily

[6] The reference here is to the so-called "Paretian social optimum". "The real significance of the Paretian welfare economics, then, is that it sets forth explicitly the distinction between those changes in social variables which can take place through 'trading'—i.e., through a mutual benefit of all parties—and those changes which involve 'conflict,' or the benefit of one party at the expense of another. In a civilization which is threatened by extinction because of an inability to solve the problem of conflict this distinction may be of considerable importance." Boulding, *loc. cit.*, pp. 18-19.

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maximize the total welfare either of the global economy or of any given national economy. Nor does the welfare optimum necessarily represent a rational objective to all parties. If, in attaining the welfare optimum, a trader—whether an economy generally or a component of it—loses and is not fully compensated for its loss, what can be the basis of enthusiasm on its part for a market structure which promotes this so-called optimum?

II

Economists, who are strongly inclined to suspect monopolistic influence as nefarious, have typically been champions of substantially free trade. But modern theory does not assert unequivocally that free trade is the only economically rational commercial policy. Free trade can, indeed, contribute to efficiency in the allocation of the world's resources. But a particular nation in the world economy, like an individual producer in the national economy, *may,* under certain circumstances and especially in the short run, gain by appropriate interferences with trade. A protectionist policy, which is suspect from the perspective of the global economy, *may* be quite rational from the viewpoint and the typical criteria of an individual country. While under necessary and common conditions *some* trade is preferable to *no* trade for a country, *restricted* trade may be better than *free* trade for that country.[7]

Many specific "economic" arguments, of varying degrees of intellectual respectability, have been offered in the defense of trade barriers.

(A) One ancient and still interesting case of deviating from free trade is the support of "infant" industries. By receiving temporary protection, a "young" industry may be enabled to realize its potential, develop into a position where it can survive the rigors of unfettered world competition, and perhaps further diversify the economy. In public tariff de-

[7] "The very fact that any trade takes place is an indication that both individuals are better off, since each can at the very worst refuse to trade. Economists have proved this . . . under the mistaken impression that they were at the same time proving the desirability of free trade." P. A. Samuelson, "Welfare Economics and International Trade", *American Economic Review,* vol. XXVIII (June 1938), p. 265.

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bates in the United States during much of the period prior to World War I, this was probably the most prominent line of thought of the protectionists.

(B) Another hoary but intellectually quite uninteresting defense of protective policies stems from alleged fear of "pauper labor" abroad. In its crudest and most popular form, the argument holds that domestic producers cannot compete with foreign industries if wage rates abroad are lower than American rates. But neither the wage rate nor the total wage bill is a reliable indicator of total costs per unit of output, which are determined by productivity as well as by wages. Indeed, relative productivity is the major determinant of relative wages. High real wages are founded on high productivity, not on preventing the purchase of commodities which could contribute to the importing nation's standard of living. By trading on the basis of specialization in lines in which its productivity is greatest, that is, in which it has a comparative advantage, an economy maintains its highest-wage industries and properly sacrifices its relatively inefficient industries. Economic rationality scarcely consists in subsidizing inefficiency. Nevertheless, the "pauper labor" argument has remained conspicuous in tariff debates, and it became relatively more important as the "infant industry" argument received declining stress after World War I.

(C) Under certain circumstances trade restrictions by a nation may improve its barter terms of trade, that is, the exchange ratio between its imports and its exports, and perhaps also increase its volume of imports—both results tending to enhance its gains from trade. But the terms of trade are not a very satisfactory welfare indicator, especially when improvement in the terms is accompanied by reduced imports and worsening in the terms by an increase in imports.

(D) In recent years, the development of national income theory—the "Keynesian revolution"—has clarified the nature of the relationship between changes in trade and capital flows and changes in the level of economic activity. Money national income is determined by expenditure on current national output, and, other things remaining the same, the development of an export balance will raise the level of

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equilibrium national income. This conclusion is so obvious intuitively that the possible effects of increased exports on money national income furnished the basis of much of the tariff debate of the 1930's.

(E) A final example stems from balance-of-payments difficulties. Many a nation during the past quarter of a century and more has found itself with a disequilibrium in its international accounts and yet been confined institutionally and politically to a limited number of adjustment mechanisms. In such cases, direct interferences have seemed to some the most convenient alternative.[8]

III

Economists are probably less inclined now than they were a generation ago to espouse a doctrinaire position in advocacy of free trade. Developments in economic theory and the degeneration of international relations appear to have been the major contributors to an intellectual environment more cordial to exceptions to the free-trade rule. Still, economists typically are reluctant even now to advocate policies of trade restriction. Such concessions from their conventional position as they are willing to make are expressed much more readily to each other than to congressional committees and to chambers of commerce.

There are good reasons for hesitancy in advocating barriers to trade even if theory suggests that they might sometimes be appropriate according to certain criteria. First, there are complex problems in noting when the prerequisite conditions for imposing restrictions actually exist, in choosing the most appropriate mode of restriction, in determining and administering the optimum degree of restriction, and in maintaining sufficient flexibility to modify the program as conditions change. It is well to keep in mind that the world is a complicated place.

[8] On modern public tariff debates in the United States, see F. W. Fetter, "Congressional Trade Theory", *American Economic Review*, vol. XXIII (September 1933), pp. 413-427, and my "The International Trade Philosophy of Cordell Hull, 1907-1933", *ibid.*, vol. XLIII (March 1953), pp. 101-116, "Issues in Congressional Tariff Debates, 1890-1930", *Southern Economic Journal*, vol. XX (April 1954), pp. 340-355, and "Cordell Hull and the Defense of the Trade Agreements Program", *loc. cit.*

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Furthermore, there is the general fear that the restricted conclusions of abstract and sophisticated analysis will be expropriated and abused by persons who are poorly equipped and little inclined to appreciate the limitations of the analysis. Also, without denying certain possible beneficial effects of trade barriers, it may be that those desired results can be obtained by preferable alternative methods. An outstanding case in point with respect to public tariff debates is the possible expansionary income effects of increased exports or curtailed imports, for there are better ways to stimulate national income than by encouraging an export balance. Finally, policies of trade curtailment which might give a nation certain advantages if it were the only country following such policies may be partially or wholly offset by retaliation. Commercial warfare, an unhappy characteristic of much modern history, tends to nullify relative gains among countries and to make every nation absolutely worse off.[9]

But the probability that a trade-restricting nation will keep its gains, if any, only in the absence of retaliation by no means implies, as some seem to suppose,[10] that the policy-making protectionist will surely eschew the potential gains of an illiberal commercial policy. Possible gains from trade restrictions are easily visualized, and there appears to be a strong tendency for a system of free trade to disintegrate.

> . . . the success of a policy of universal free trade is seriously prejudiced by the belief that countries which indulge in pro-

9 Even J. M. Keynes, who is erroneously considered by some to have been a neomercantilist, agreed that "there are strong presumptions of a general character against trade restrictions unless they can be justified on special grounds." *The General Theory of Employment, Interest and Money* (New York, 1936), pp. 338-339. For supporting liberal views of two leading innovators in the application of Keynesian analysis to international trade theory, see Fritz Machlup, *International Trade Theory and the National Income Multiplier* (Philadelphia, 1943), pp. 211-218, and Metzler, *loc. cit.*, pp. 249-252.

10 "Mr. Lerner provides an ingenious formula for the optimum rate of tax on foreign trade which a country should impose 'if it is desired to exploit the foreigner.' The technical economist will be fascinated. The commonsensical reader will be . . . altogether discouraged when he learns that if the foreigner retaliates, the formula falls to the ground and all parties suffer an economic loss." J. E. Meade, "Mr. Lerner on 'The Economics of Control'", *Economic Journal*, vol. LV (April 1945), p. 69.

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tection are acting contrary to their own economic interests. It is because the *laissez-faire* economist has so often believed that free trade is the *natural* state of affairs which, in the absence of stupidity and wickedness, would prevail that his attempts to establish it have not been more successful.[11]

In judging foreign economic policy, as in judging domestic policy, the presumption of most economists is that their support should go to the side of freedom, mutual advantage and competitive efficiency. The burden of proof now, almost two centuries after Adam Smith, is clearly on those who advocate restrictive, exploitative and monopolistic deviations from the economists' traditional rule of thumb. While theory does not yield an unqualified case for free trade, the bias of economists against trade interferences is both powerful and well justified.

WILLIAM R. ALLEN

UNIVERSITY OF CALIFORNIA AT LOS ANGELES

[11] R. F. Kahn, "Tariffs and the Terms of Trade", *Review of Economic Studies*, vol. XV (1), 1947-1948, p. 19.

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THE POST-WAR COMMERCIAL TREATY PROGRAM OF THE UNITED STATES *

DURING the decade 1946-1956, the United States completed the negotiation of commercial treaties with sixteen countries. These countries, in geographical distribution, size and national circumstance, comprise rather a cross section of the world outside the Soviet bloc. In Asia those represented include Nationalist China, Korea, Japan, Iran and Israel; in Africa, Ethiopia; in Latin America, Colombia, Haiti, Nicaragua and Uruguay; in Europe, Denmark, the Federal Republic of Germany, Greece, Ireland, Italy and the Netherlands.[1] As the Department of State avowedly stands ready to negotiate with every like-minded country, others will undoubtedly be added to the list in due course.

These treaties, more fully known as treaties of "friendship, commerce, and navigation", are long-range instruments of a general type made familiar by international practice of former years. In contradistinction to limited-purpose trade agreements dealing with commerce in the narrow sense, they are designed to establish the ground rules regulating economic intercourse in the broad sense, and they accordingly must reflect a meeting of minds regarding proper international standards of behavior on a variety of subject matters.

* The views expressed here are those of the author only and do not necessarily reflect the position of the Department of State.

1 *China*, 1946 (63 Stat. 1299); *Italy*, 1948 (63 Stat. 2255) supplemented by Agreement of September 26, 1951 (S. Exec. H, 82d Cong., 2d Sess.); *Uruguay*, 1949 (S. Exec. D, 81st Cong., 2d Sess.); *Ireland*, 1950 (1 UST 785); *Colombia*, 1951 (S. Exec. M, 82d Cong., 1st Sess., withdrawn from Senate June 30, 1953); *Ethiopia*, 1951 (4 UST 2134); *Greece*, 1951 (5 UST 1829); *Israel*, 1951 (5 UST 550); *Denmark*, 1951 (S. Exec. I, 82d Cong., 2d Sess.); *Japan*, 1953 (4 UST 2063); *Federal Republic of Germany*, 1954 (TIAS 3593); *Haiti*, 1955 (S. Exec. H, 84th Cong., 1st Sess., withdrawn from Senate, August 8, 1957); *Iran*, 1955 (TIAS 3853); *Nicaragua*, 1956 (S. Exec. G, 84th Cong., 2d Sess.); *Netherlands*, 1956 (TIAS 3942); *Korea*, 1956 (TIAS 3947). The treaties with Ethiopia and Iran represent considerably abridged versions and vary also from the others in that they contain provisions on consular rights, a subject matter usually dealt with in separate conventions in current United States practice.

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Because of the nature of the treaties and the scope of the negotiation effort, the current treaty program of the United States, though little remarked during these ten years of crisis and more spectacular endeavor, is thus one of some magnitude; and its unfolding illustrates the adaptability of a traditional device to present international requirements.

Background and Objectives

The program now under way carries forward one of the oldest continuing diplomatic activities of this nation, reaching back to the Revolutionary War. From 1778 onward, with varying degrees of intensity from era to era, the commercial treaty device has been repeatedly used in the conduct of American foreign relations. In terms and content, the purpose of the treaties has been to promote trade relations and to protect shipping and the citizen and his interests abroad, according to legal principles. Throughout, they have maintained this evident purpose. But historically they have also had other purposes. As suggested by the wording of their full title and preamble, they have been designed to strengthen normal friendly relations between the signatories.[2] Depending on the era in which the treaties were negotiated, they have as well been responsive to varying special motivations. In pre-Constitutional days, for example, they betokened and helped secure recognition of American independence.[3] In the first half of the nineteenth century, the period in which the American clipper became mistress of the seas, they were employed to open foreign ports to American shipping. The conclusion of the treaties with countries of Latin America in this period, through emphasizing the sovereignty and rising importance of those countries and their ties with the United States, served to emphasize the Monroe Doctrine; and in the era of intense power competition for

[2] A typical preamble (e.g., that of the recent Netherlands treaty) recites, as first justification of the treaty: "desirous of strengthening the bonds of peace and friendship traditionally existing between them."

[3] Our first, the Treaty of Amity and Commerce with France, signed on February 6, 1778, was followed on the same day by signature of the Treaty of Alliance. Before the Revolutionary War formally ended, commercial treaties were signed also with the Netherlands (1782) and Sweden (1783); and thereafter also with Prussia (1785), prior to the Constitutional Convention.

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colonies and spheres of influence, they served to support the open-door principle.

Following World War I, special motivations such as these, pertaining to a new-born and then to a rising nation intent upon developing its own economy and establishing its place in the world community, no longer obtained. That war established the United States as a world Power of first rank, a leading international creditor and a major exporter of manufactures. But the normal and evident purposes of promoting commercial intercourse remained, being intensified by the new foreign economic interests of the nation. A new series of negotiations was therefore undertaken during that period, with special emphasis on international trade.[4] The reciprocal trade agreements program which subsequently developed, however, after 1934, provided a more precise and efficacious medium for attaining trade promotion objectives.[5] A new consideration which then emerged, and which lent special impetus to the program following World War II, was the need for encouraging and protecting foreign investment, responsively to the increasing investment interests of American business abroad and to the position the United States has now reached as principal reservoir of investment capital in a world which has become acutely "economic-development" conscious. The pre-existing content of the commercial treaty (now often known as "FCN treaty") was therefore overhauled with a view to improving and strengthening its relevance to investor needs;[6] and the eventuating new edition

[4] This program resulted in the conclusion of treaties with twelve countries, beginning with the Treaty of Friendship, Commerce and Consular Rights with Germany, 1923, and including Austria, Finland, Estonia, Latvia, Norway, Honduras, El Salvador, Poland, Hungary, Siam (Thailand) and Liberia.

[5] The Trade Agreements Act of 1934, so prominently identified with Cordell Hull, as periodically extended and revised. Under this legislation bilateral agreements were concluded with 28 countries, 1934-46, prior to adoption of the policy of conducting trade agreement negotiations principally within the framework of the General Agreement on Tariffs and Trade (GATT) (*q.v., infra*). By contrast only two commercial treaties of the type herein discussed were concluded between 1934 and 1946 (those with Siam and Liberia).

[6] See my article "Treaties for the Encouragement and Protection of Foreign Investment: Present United States Practice", 5 *American Journal of Comparative Law* 229-247 (1956). See also, e.g.: Vernon G. Setser, "Treaties to Aid American Business Abroad", 40 *Foreign Commerce Weekly* 3-5, 38-39

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of this traditional treaty type has been repeatedly recommended in an authoritative way, in both official and private circles, as a vehicle for building an international "climate" favorable to private investment.[7]

The current program then, in so far as the United States is concerned, has been specially actuated by investment-related motives. This primary investment objective is, however, sought in the context of a larger regulation of bilateral intercourse in the private sector, and in company with the other objectives appertaining to such instruments. The treaty thus retains its familiar outline and scope. There have always been substantial investment elements in treaties of this type because they have always dealt with the protection of the citizen abroad, his property (capital) and his right to engage in business activities (that is, to make and operate investments). Their reworking for investment ends, accordingly, has simply entailed the recasting, elaboration and supplementation of familiar features. Their trade and cultural and shipping elements are also maintained, in perspective; and they remain, too, vehicles for generally strengthening neighborly ties between peoples, though there is no element of political alliance in them. In this way, they afford an ample

(Sept. 11, 1950); Robert R. Wilson, "Postwar Commercial Treaties of the United States", 43 *American Journal of International Law* 262-287 (1949), "Property-Protection Provisions in United States Commercial Treaties", 45 *ibid.* 83-107 (1951), "Access-to-Courts Provisions in United States Commercial Treaties", 47 *ibid.* 20-48 (1953), and "Natural-Resources Provisions in United States Commercial Treaties", 48 *ibid.* 355-379 (1954).

[7] For example, sec. 516(d) of the Mutual Security Act of 1952 (66 Stat. 146), reënacted and revised in 1954 (68 Stat. 847); House Committee on Foreign Affairs, Subcommittee on Foreign Economic Policy, Report on *The Mutual Security Act and Overseas Private Investment* (83d Cong., 1st Sess., 1953), pp. 26-29; President's Materials Policy Commission, *Resources for Freedom* (H. Doc. 527, 82d Cong., 2d Sess.), vol. I, p. 68; Department of Commerce, *A Study of Factors Limiting American Private Foreign Investment* (Summary of Preliminary Findings and Recommendations, July 1953), p. 31; Commission on Foreign Economic Policy ("Randall Commission"), *Report to the President and the Congress* (January 1954), p. 17; Resolution of the Board of Directors of the National Association of Manufacturers, quoted in the House Committee Report, p. 26; Chamber of Commerce of the United States, *What the National Chamber Stands for in World Affairs* (June 1952), pp. 11, 13-14; National Foreign Trade Council, various *Final Declarations* of their annual New York conventions—e.g., that of 1950, pp. 16-17.

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framework within which can be harmonized the views and interests of both the United States and each other country; the latter may not be, and often is not, animated by quite the same desires and needs in negotiation as the United States.

In sum, they are multi-purpose treaties, if anything even more so now than in the past. They seek to deal with the whole citizen, in his person and his property, who has lawful concerns in another country: his rights of entry and residence; his personal freedoms, such as liberty of conscience and due process of law; his rights to legal benefits and recourse to the courts in pursuit and defense of his interests; his rights to establish and conduct business enterprises, to engage in both lucrative and nonprofit activities; his right to acquire, possess and dispose of property, and to receive a high standard of respect for his property; the rules of financial policy, as represented by taxes and exchange regulations, to which he is subject. They now deal alike with juridical persons (companies). They deal also with the various aspects of the international movement of goods and ships, and with such miscellaneous matters as the behavior of state-controlled business enterprises, the letting of government contracts and concessions, and restrictive business practices.

The Relative Rôle of Commercial Treaties

Because these treaties cut across or impinge upon fields of interest of other international agreements, and of multilateral conferences and organizations, the question therefore arises of their consonance with, and their purposiveness in light of, the ever-growing complex of international agreements and organizations. Where does this essentially traditionalist bilateral approach fit in the pattern of multilateralism and specialized arrangements that has evolved with the growing complexity of international society?

The principal existing multilateral conventions involving the United States, which have a large world-wide participation and which deal with topics also covered in the commercial treaties, are the International Monetary Fund, the General Agreement on Tariffs and Trade (the GATT), and the Paris Industrial Property Convention. The first of these is involved in the exchange-control article of the commercial

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treaty; and the relationship of the two may be very briefly summarized as follows. The stipulated objective of the Fund is to eliminate governmental restrictions on international payments for "current transactions", particularly those affecting the flow of international trade; and according to the Fund Articles of Agreement (Article VI, section 3), each member specifically retains virtually complete freedom of action with respect to capital transfers.[8] The primary objective of the treaty, on the other hand, is to provide for the servicing of investor—as distinguished from trading—needs and requirements.[9] It therefore supplements the Fund by establishing agreement on matters with respect to which the Fund leaves an area of discretion; it does this interstitially, and the integrity of the Fund is safeguarded by a reservation preserving all obligations a country may have to that organ.[10]

As to relationship with the GATT, the treaty does not deal with specific tariff and quota concessions, which it is the primary purpose of the GATT to attack. But it does repeat certain general rules of behavior contained in the GATT; and here again, as in the case of the International Monetary Fund, possible conflict between the treaty and the GATT is avoided by a reservation expressly making the lat-

[8] Text in Annex A, *Final Act and Related Documents* of the United Nations Monetary and Financial Conference at Bretton Woods (Washington, 1944). See also statement of purposes of the Fund, as set forth in Article I of the Agreement, clauses (ii) and (iv).

[9] This objective is indicated by the key wording of the treaty's exchange-control article (e.g., Article XII, par. 3, of Netherlands treaty): "If either Party imposes exchange restrictions in accordance with paragraph 2 of the present Article, it shall, after making whatever provision may be necessary to assure the availability of foreign exchange for goods and services essential to the health and welfare of its people, make reasonable provision for the withdrawal, in foreign exchange in the currency of the other Party, of: (a) the compensation referred to in Article VI, paragraph 4, (b) earnings, whether in the form of salaries, interest, dividends, commissions, royalties, payments for technical services, or otherwise, and (c) amounts for amortization of loans, depreciation of direct investments, and capital transfers to the extent feasible, giving consideration to special needs for other transactions."

[10] E.g., Article XII, par. 2, second sentence, of the treaty with the Netherlands: "It is understood that the provisions of the present Article do not alter the obligations either Party may have to the International Monetary Fund or preclude imposition of particular restrictions whenever the Fund specifically authorizes or requests a Party to impose such particular restrictions." This wording is carefully chosen to permit both the treaty and the Fund to operate side by side, so long as the former does not actually interfere with the latter.

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ter prevail.[11] Despite the subordination of the treaty thus provided, however, the treaty is calculated to serve at least three practical purposes. First, especially as the GATT still operates on a provisional basis, the treaty provides a basic agreement to fall back on if, for any reason, the GATT should cease to be in effect between the treaty signatories. Second, it provides now such a basic agreement with respect to those countries which are not party to the GATT (for example, Ethiopia, Ireland, Israel). Third, the treaty seeks to supplement the GATT by making bilateral advances with respect to certain matters on which multilateral agreement has not proved possible in the GATT. Examples are the treaty rule concerning nondiscrimination in the furnishing of government services; and the so-called "30-day" or "en route" rule, which provides a certain period of grace between the time new trade restrictions are promulgated and their going into effect.[12]

In the case of industrial property, the treaty merely reaffirms the national-treatment rule contained in the international convention; and no problem of conflict or variance arises. Mention should also be made of the treaty's coverage of commercial arbitration, a subject dealt with in the Geneva Protocol of 1923 on the enforcement of arbitration contracts

[11] As exemplified by the Netherlands treaty, the paralleling materials are in Articles XIV, par. 1 (most-favored-nation treatment as to customs duties), pars. 2-4 (nondiscriminatory administration of prohibitions and restrictions affecting imports or exports), and par. 6 (exception for balance-of-payments difficulties); XV, par. 1 (public notice and equitable administration of new customs regulations), par. 2 (appeals and penalties, in customs administration) and par. 3 (marking requirements); XVI, par. 1 (internal treatment of imported goods); XVII, par. 1 (operations of state-trading entities), par. 2 (a) (purchase of government supplies); XXI (c) (transit of goods); and certain customary exceptions in Article XXII. The clause providing for cross-relationship between the two instruments is paragraph 4 of Article XXII: "The provisions of the present Treaty relating to the treatment of goods shall not preclude action by either Party which is required or specifically permitted under the General Agreement on Tariffs and Trade during such time as such Party is a contracting party to the General Agreement. Similarly, the most-favored-nation provisions of the present Treaty shall not apply to special advantages accorded by virtue of the aforesaid Agreement."

[12] The former—e.g., Article XVII, par. 2 (c), of the Netherlands treaty—has been generally accepted in the treaties signed to date; but the latter (e.g., Article XV, par. 2, second sentence, of Japan treaty) has been omitted from some of them (e.g., those with Ireland, Israel and Germany) and is in the Netherlands treaty in modified form.

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and the Geneva Convention of 1927 on the enforcement of arbitration awards.[13] These instruments have been adhered to by many European countries, but not by the United States and most other non-European countries. The treaty approaches this subject in a way which is consistent with that of the Geneva instruments and which adherents and non-adherents to those instruments alike can accept. In effect, the treaty affords a bilateral medium through which the general objectives sought in the Geneva instruments are being subscribed to by additional countries.[14] Finally, there is in process of formation a multilateral organization dealing with shipping.[15]

In the domain of bilateral agreements, the principal type in United States practice covering subject matter also included in the commercial treaty is the convention for the avoidance of double taxation with respect to taxes on income, and for the mutual protection of revenue, more briefly known as the double-tax convention.[16] This convention is a detailed

[13] Texts may be found, for example, in *International Yearbook on Civil and Commercial Arbitration*, vol. I, pp. 239-43 (1928).

[14] The unique form of the provision as it appears in the Netherlands treaty suggests this result: "In conformity with subparagraphs (1) and (2) hereof, awards duly rendered pursuant to any such contracts, which are final and enforceable under the laws of the place where rendered, shall be deemed conclusive in enforcement proceedings brought before the courts of competent jurisdiction of either Party. (1) As regards recognition and enforcement in the United States of America, such awards shall be entitled in any court in any State thereof only to the same measure of recognition and enforcement as awards rendered in other States thereof. (2) As regards enforcement in the Kingdom of the Netherlands, such awards shall be dealt with in the same way as awards as referred to in the Convention on the execution of foreign arbitral awards concluded at Geneva on September 26, 1927." An arbitration provision is missing from the treaties with Uruguay and Ethiopia. For an account of this subject, see my article "Commercial Arbitration Provisions in United States Treaties", 11 *Arbitration Journal* (new series) 68-84 (1956).

[15] Convention on the Intergovernmental Maritime Consultative Organization, signed at Geneva March 6, 1948 (S. Ex. L, 80th Cong., 2d Sess.).

[16] Such conventions had entered into force with 19 countries by April 1, 1957 and in addition one convention, that with Austria, was awaiting ratification. For discussion of the program, see: E. Roy Gilpin and H. Gilmer Wells, "International Double Taxation of Income: Its Problems and Remedies", 28 *Taxes* 9-32 (1950); Burton W. Kanter, "United States Income Tax Treaty Program", 7 *National Tax Journal* 69-88 (1954); and address by Eldon P. King, Director, International Tax Relations Division, Internal Revenue Service, Department of the Treasury, "The Income Tax Conventions with Germany and Japan, and Prospective Conventions with Latin America", de-

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technical instrument concerned with which country will tax, or not tax, income that is potentially subject to taxation by both, and with measures of coöperation between the taxing authorities of the two signatories: that is, with jurisdiction and the system and basis of taxation. The commercial treaty, on the other hand, is concerned broadly with the principle of nondiscrimination in the levy and collection of taxes, whatever be the system; and thus the two instruments supplement and reinforce one another. In the one connection in which the treaty covers a double-tax subject,[17] it provides an elementary rule of equity to rely upon in those instances in which a double-tax convention is not in force between the signatories. Necessary cross-relationship is provided through a reservation assuring that the more general instrument, the treaty, cannot interfere with the specific arrangements that may be made in the more specialized instrument, the double-tax convention.

The commercial treaty, finally, can impinge to a degree upon other types of agreements which other countries make among themselves, such as, for example, conventions on *assistance judiciare* or agreements relating to social security benefits. But negotiating experience so far has not revealed any dissonances which on this account require substantial adjustments in, or reservations to, the affected commercial treaty provisions normally favored by the United States when it enters negotiation (aside from normal reservations for recognized territorial trade preferences).[18]

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livered before the International Fiscal Association, New York, May 6, 1955. A parallel series of conventions deals with the avoidance of double taxation with respect to estates (inheritance); and their relationship to the commercial treaties is the same. Thirteen such conventions were in force on April 1, 1957. (The numbers in force on January 1, 1958 were, respectively, 20 and 13.)

17 This provision (e.g., Article XI, par. 4, of Netherlands treaty) assures that a company of one party will be taxable in the other only on the business it does in the latter, rather than on the basis of its "world income" as might be possible under the national-treatment clause.

18 The exchange of notes appended to the Netherlands treaty—dealing with the problem of harmonizing the strict most-favored-nation rules of the treaty with the preferences that might develop among countries participating in a future European integration arrangement—and the Commonwealth preference reservation in Article XX, par. 3 (b), of the Irish treaty—just as the customary United States reservations for its preferential trading arrangements with Cuba

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A recitation of actually operative international agreements, multilateral and bilateral, then reveals: first, that the commercial treaty serves a definite practical purpose in those cases when it is dealing with the same subject as other agreements; and, second, that only a fraction of its content is concerned with or duplicates things otherwise regulated by interstate agreements of concern to the United States. This second fact—namely, that the commercial treaty provides the only vehicle so far devised and demonstrably capable of utilization for treating an important range of subject matter—provides the major explanation and justification for its active use in the conduct of foreign policy of the United States. To start with, it fills a void conspicuously left by the persistent lack of any successful multilateral agreement, either piecemeal or frontal, on the ground rules which should govern in the foreign investment process: the treatment of the alien entrepreneur, his enterprise and his property. Indeed, past experience strongly suggests that multilateral endeavors in this area are foredoomed to failure, under present circumstances, owing to the lack of any sufficiently elevated international consensus or community of interest concerning the degree to which and conditions under which the alien should be welcomed to participate in a nation's economic life; and that, accordingly, the bilateral country-by-country approach is apparently as yet the only feasible one.

Scope of the Treaties

Topics in addition to exchange control, trade and taxation, on which progress has been recorded in the commercial treaties over the past ten years, include those listed below. These, together with the provisions mentioned above, summarize the general content and purposes of the treaties.

Companies.[19] The general standard of national treatment —that is, nondiscrimination as between the alien and the citi-

and the Philippines—illustrate the typical kinds of adjustments that sometimes have to be made to allow for the international commitments of a party to the commercial treaty.

[19] For a fuller discussion, see my "Provisions on Companies in United States Commercial Treaties", 50 *American Journal of International Law* 373-93 (1956).

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zen—has in principle been normal for many years in United States treaties (as well as those of many other countries), in so far as natural persons are concerned. However, prior to World War II, the same was not true of juridical entities. These were in practice either ignored, or else dealt with in only a limited or restricted way,[20] or else assured only of most-favored-nation treatment. But in the current series of treaties, a comprehensive endeavor is made to extend the same liberal standard to companies and the activities of companies. This outstandingly important advance over previous international practice has obvious pertinence to the value of these treaties for investment purposes, in view of the predominant way in which foreign investment is made in modern times through the corporate device. The right of corporations to engage in business on a national-treatment basis may be said to constitute the heart of the treaty as an investment instrument.[21]

Beyond this, the treaties represent a perhaps overdue response to the need for crystallization of internationally recognized rules concerning the status and rights of corporations, whether or not in the investment setting. The treaty provisions on companies are accordingly not confined to investment corporations, but extend to juridical entities generally. Thus express provision is made for the nonprofit entity, and its activities, a subject toward which past international treaty practice has tended to manifest even greater reserve than toward the business corporation.[22] Again, on the subject of

20 See, e.g., the reservation which was included in all the treaties of the inter-war period: "The right of such corporations and associations of either High Contracting Party so recognized by the other to establish themselves within its territories, establish branch offices and fulfill their functions therein shall depend upon, and be governed solely by, the consent of such Party as expressed in its National, State, or Provincial laws." Article XII, second par., of 1923 treaty with Germany.

21 This is basically set forth in Article VII, par. 1, of the Netherlands treaty: "Nationals and companies of either Party shall be accorded national treatment with respect to engaging in all types of commercial, industrial, financial and other activity for gain (business activities) within the territories of the other Party, whether directly or by agent or through the medium of any form of lawful juridical entity."

22 Treaties of various nations have tended to limit such company provisions as they have contained to corporations organized for business purposes. The United States policy of including also nonprofit entities began, however, with the German treaty of 1923. See Article XII, first paragraph, thereof.

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juridical status of entities, these treaties have sponsored a return to the "classical" theory: that is, that the mere fact of lawful creation in either country shall *ipso facto* be sufficient to endow the entity with lawful being and recognition in the other, without any additional tests, such as where it maintains its seat, the nationality of its ownership or direction, the character of its aims or otherwise.[23] The contribution which the current treaties make in this connection is pointed up by the debate and confusion which have marked the subject of the proper tests applicable to the recognition of juridical personality of foreign entities,[24] and by the great extent to which the simple classical test has been departed from in international practice, over the last half century.[25] The resolution attained has been made possible by the clear distinction maintained, in the treaty's provisions, between the civil and the functional capacities of companies.[26] Cognately, provision has been made for the free privilege of the nondomesticated foreign company, which is not engaged in business in the other country, to sue and be sued in the courts of the latter.[27] On the other hand, provision is also made for "piercing the corporate veil", in order to assure protection of the real parties-in-interest lying behind the corporate façade, in certain instances in which the corporate entity has a nationality different from that of such parties and hence

[23] For example, see wording of Article XXIII, par. 3, of the Netherlands treaty: "As used in the present Treaty, the term 'companies' means corporations, partnerships, companies, foundations, associations, and other legal entities or juridical persons, whether or not with limited liability and whether or not for pecuniary profit. Companies constituted under the applicable laws and regulations within the territories of either Party shall be deemed companies thereof and shall have their juridical status recognized within the territories of the other Party."

[24] E.g., the observation of Sigmund Timberg that, as to a recognized test, "in the corporate field, we find confusion and uncertainty." "Corporate Fictions", 46 *Columbia Law Review* 533, 572 (1946).

[25] The United States treaties of the inter-war period, for example, required as a condition precedent to recognition that the company maintain a "central office" in the country of its creation and pursue no aims in the host country contrary to the laws thereof. Article XII, German treaty of 1923.

[26] That is, logically the mere acknowledgment of the fact of being of an entity need not be qualified when the purposes for which qualifications are desired can be adequately served by appropriately wording the provisions dealing with the operation of the entity within the country.

[27] E.g., Article V, par. 1, second sentence, Netherlands treaty.

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not technically entitled to claim protection from the country of which the latter are nationals.[28]

Property Protection. The extent to which the institution of private property has of late come under question or attack has underscored the need for reaffirming and reinforcing traditional international law regarding the protection which a government owes to the property of the alien.[29] In addition to providing generally for " the most constant protection and security " and prohibiting unreasonable searches and seizures,[30] the treaties therefore introduce injunctions against arbitrary impairments of established interests[31] and give greater definition to the obligation to pay just compensation for property expropriated or otherwise taken. The formula evolved in connection with the latter, in view of its importance, warrants quotation:

> Property of nationals and companies of either Party shall not be taken within the territories of the other Party except for a public interest, nor shall it be taken without the prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof.[32]

Moreover, a protocol has been devised to assure that, when the affected property belongs to a juridical entity which itself, because of its nationality, is not entitled to treaty protection (for example, it is chartered under the laws of a third

[28] For example, an American corporation is assured the right to organize and control a subsidiary under the laws of the other country; and such subsidiary, although having the nationality of the latter, rather than United States nationality, is given treaty rights which the United States is enitled to espouse.

[29] The great difficulty, apparently, of achieving such a result in a multilateral forum at present is illustrated by the silence or ambiguities regarding obligation to pay compensation in event of expropriation manifested by such documents as: General Assembly, United Nations, Resolution 626 (Seventh Assembly 1952) regarding resources; Article 12 of the abortive Havana Charter of 1948 for an International Trade Organization (see William Diebold, " The End of the ITO ", *Princeton Essays in International Finance* No. 16, 1952, pp. 18-19) and the projected United Nations Covenant on Human Rights.

[30] Netherlands treaty, Article VI, pars. 1 and 2.

[31] *Ibid.*, par. 3.

[32] *Ibid.*, par. 4.

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country), the obligation to pay compensation nevertheless holds as to such persons entitled to treaty protection as may ultimately hold interests in the entity, to the extent of their interest. This provision reads as follows:

> The provisions of Article VI, paragraph 4, providing for the payment of compensation shall extend to *interests held directly or indirectly* by nationals and companies of either Party in property which is taken within the territories of the other Party.[33] (Italics supplied)

Waiver of Sovereign Immunity. The commercial treaties, beginning with the Italian treaty in 1948, have been a vehicle through which the United States government has espoused the restrictive theory of sovereign immunity, to the extent set forth as follows:

> No enterprise of either Party, including corporations, associations, and government agencies and instrumentalities, which is publicly owned or controlled shall, to the extent that it engages in commercial, industrial, shipping or other business activities within the territories of the other Party, claim or enjoy, either for itself or for its property, immunity therein from taxation, suit, execution of judgment or other liability to which privately owned and controlled enterprises are subject therein.[34]

This reflected a shift in United States policy which had been in the making for some time, tracing back conceptually to the Court of Claims Act of 1853 and the Tucker Act of 1887, through the Admiralty Acts of the 1920's and the Tort Claims Act of 1946.[35] The practical purpose, from the treaty standpoint, was to narrow the range of competitive inequality between private and state-owned business enterprise. After this clause had appeared in several treaties, the shift culminated in the so-called Tate letter of May 19, 1952, in which the Department of State announced that it would thereafter favor the restrictive theory as to immunity claims advanced

[33] *Ibid.*, Protocol, par. 6. [34] *Ibid.*, Article XVIII, par. 2.

[35] Respectively, 10 Stat. 612; 24 Stat. 505; 46 U.S.C., chs. 20 and 22; and 28 U.S.C., ch. 171. The basis for the treaty rule had been fairly well laid by 1948 by the approach taken by the courts to immunity claims of foreign government commercial corporations. See "Sovereign Immunity for Commercial Instrumentalities of Foreign Governments", 58 *Yale Law Journal* 177 *et seq.* (1948).

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on behalf of any foreign government.[36] Thus, finally, the United States joined the camp of the continental nations which had earlier abandoned the "classical" theory of sovereign immunity.

Human Rights. These treaties in the broad sense have always been concerned in a major way with human rights—the respect and protection owed by each member of the international community to the stranger within its gates. Indeed, provisions on the rights of persons—so-called "establishment" provisions—commonly form the first sections of such treaties.[37] The current treaties have proceeded with obtaining confirmation of basic principles in this area of affairs, at a time when the United Nations continues to encounter frustration in its pursuit of a generally acceptable universal convention on human rights. The treaties do not, of course, share the latter project's ambition to provide a charter for all individuals, including the protection of citizens against their own government, but are limited to the duties that nations owe to the alien. Moreover, they are confined to matters of more or less traditional treaty concern, to the exclusion of the sociological dispositions of national laws and traditions.

In addition to providing for the protection of the alien's property, already alluded to, the treaties provide for: the protection of his person against molestations; his right to equal protection of the laws; his right, if arrested, to humane treatment, to communicate with his consul, to be informed promptly of the accusations against him, to a prompt trial, to ample opportunity to prepare his defense, and to the services of counsel of his choice; his liberty of movement and residence; his freedom of conscience and his right to worship,

[36] Letter from the Acting Legal Adviser to the Attorney General, Department of State *Bulletin*, June 23, 1952, pp. 984-85. The special significance of the State Department's views results from the fact that the judiciary tends to seek guidance from the political branch when a question of this kind arises. On this point see concurring opinion of Justice Frankfurter in *Republic of Mexico v. Hoffman* 324 U. S. 30, 38 (1945).

[37] If the titles normally given to these treaties were more fully spelled out, they could suitably be termed treaties of "friendship, establishment, investment, commerce and navigation". The rights of persons covered in the establishment provisions extend, of course, to such matters as engaging in business and occupations, and the protection of their property.

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either publicly or privately, according to his own faith; his right freely to communicate with others; and his right to engage in both gainful and nonprofit work.[38]

Freedom of Information. Cognately, the treaties since 1948 have normally contained a provision assuring the right without interference to gather and report the news, more exactly "to gather and to transmit material for dissemination to the public abroad". Here again these instruments have been used as vehicles for attaining in principle an objective concerning which a multilateral effort, under United Nations auspices, was unable to agree on a generally acceptable convention.[39] This further illustrates the resiliency and adaptability of the traditional commercial treaty to the needs of its time; and also the potentiality it holds for achieving step by step, in the quiet atmosphere of patient and amicable bilateral discussions, a variety of objectives which have not proved attainable through more spectacular or ambitious conventional media.

Settlement of Disputes. The inclusion, beginning with the China treaty of 1946, of an unqualified provision for the submission of otherwise unresolvable disputes to the International Court of Justice for adjudication is a landmark in the treaty policy of the United States. These treaties represent for the first time the unreserved acceptance by the United States of an international tribunal's jurisdiction, in a major and systematic manner, as to future disputes.[40] Prior to the signing of the first of these treaties, the Senate had adopted the Connally resolution through which the United States accepted the optional clause of the Court Statute, subject to

[38] These matters are covered, in the Netherlands treaty, mainly in Articles II, par. 2; III, both pars.; V, par. 1; VII, par. 1; and VIII, par. 2.

[39] See *Report* of United States Delegates to the United Nations Conference on Freedom of Information (Geneva, 1948) (Department of State Publication 3150); Robert R. Wilson, "International Law and Proposed Freedom of Information", 39 *American Journal of International Law* 790-93 (1945).

[40] There was a precedent in the International Civil Aviation Convention of 1944. See memorandum submitted by the Department of State in justification of the court clause in the first of the current series, the China treaty of 1946, in *Hearing before a Subcommittee of the Committee on Foreign Relations . . . 80th Congress, 2d Session, on a Treaty . . . [with] China,* April 26, 1948, pp. 29-30. The normal wording of the clause may be found in the Netherlands treaty, Article XXV, par. 2.

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certain reservations.[41] The type of controversies potentially arising over the interpretation or application of the terms of a bilateral commercial treaty would appear to be altogether proper for reference to an international court, without raising the kinds of questions that occasioned the Connally reservations. The standard form of compromissary clause now used in the commercial treaties, however, leaves open the precise procedure to be followed in referring a dispute.

Miscellaneous. In concluding the recitation of the subject matter of the treaties, mention should be made of a provision which has been designed to curb restrictive business practices (" cartels "), another topic on which multilateral efforts to find a viable consensus among nations has proved unsuccessful.[42] This provision of the treaty is a modest and imprecise statement, being in terms of an agreement on a point of view, rather than an exact legal rule, and being considerably short of an impracticable endeavor to export the Sherman Antitrust Act.[43] Finally, it may be noted that a navigation article reaffirms a liberal régime of treatment to be applied to international shipping. The rules set forth reflect the practices which have historically been developed by leading maritime nations, and are designed to curb ultranationalistic or protectionist tendencies, of which there is considerable evidence, in the shipping field. On the multilateral front, in comparison, there is in process of creation an Intergovernmental Maritime Consultative Organization (as a specialized agency in relationship with the United Nations),[44] designed to provide an international forum for the

41 Sen. Res. 196, August 2, 1946. The reservations were for (a) disputes which might be entrusted to another tribunal, (b) disputes concerning matters essentially within the domestic jurisdiction of the United States, and (c) disputes arising under multilateral treaty except under certain conditions.

42 See, e.g., Martin Domke, "The United Nations Draft Convention on Restrictive Business Practices", *International and Comparative Law Quarterly*, January 1955, pp. 129-40.

43 The provision is missing from the treaties with China, Ethiopia, Iran and the Netherlands. The normal wording may be found, for example, in Article XVIII, paragraph 1, of the Japan treaty of 1953. It expresses disapproval of restrictive practices that have harmful effects on international trade, calls upon the parties to consult about any such practices, and commits each to undertake such corrective action as it might deem appropriate.

44 *Supra*, note 15. The ratification of the United States was deposited on August 17, 1950.

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airing of shipping problems but which does not purport, as does the treaty, to impose explicit obligations as to the treatment any country will grant to another's vessels. The value of reconfirming traditional rules through treaty is pointed up by the fact that the various differences of interest among nations has led to great delays in arriving at the adherences necessary to the coming into force of the IMCO Convention (drafted at an international conference in 1948), even though by definition the Organization is to be only "consultative and advisory".[45]

Nature and Limitations of the Treaties

The treaties deal with the subjects within their purview in language of simple elementary principle, of a constitution-like character. Their avoidance of detail and of statute-like elaboration and specificity is in keeping with their essential character. Being comprehensive instruments, cutting across a wide range of interests, they must correspondingly be fashioned with broad strokes, if they are to be at all manageable. Being designed to serve as a basic charter of relations for a long period of years, they must be confined to fundamentals so framed as to preserve their validity over the vicissitudes and changing conditions of an indefinite future. Predominantly, therefore, the norms of treatment set forth are of a contingent character, permitting an endlessly flexible adaptation of content within the integument of a governing legal principle. These norms are mainly national treatment or most-favored-nation treatment, or both, as the case may be.[46] In the establishment provisions—those dealing with the rights of persons and enterprises—the former is normally sought, as being obviously much the stronger of the two; for a country is not in general likely to accord any aliens better treatment than it accords its own nationals, whereas the most-favored

[45] Article 2 of the Convention. By the terms of Article 60, the Convention will come into force when adhered to by 21 countries of which 7 must each have at least 1,000,000 tons of shipping, a number still short of attainment as of April 1, 1957, and the Convention was not in force on January 1, 1958.

[46] In certain very fundamental matters (e.g., freedom of conscience, compensation for expropriated property) these norms are passed, in order to assure the treaty alien a basic minimum protection regardless of the treatment others might receive.

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nation standard allows any amount of discrimination against aliens as a class.

In this characteristic of the treaties lie both their strength and their weakness. On the one hand, the essential moderation and reasonableness of constructing a dike against discrimination, of attending to first things first without purporting further to circumscribe or prescribe either country's legislative policy, make the negotiation and conclusion of the treaties possible as a practical matter. Governments can with prudence undertake long-term commitments of a foundation character, but may not be at all prepared to freeze their freedom of action and judgment regarding the details of legislative and internal policy, especially over so broad an area as is covered by a commercial treaty.[47] On the other hand, nondiscrimination may of itself fall considerably short of creating conditions prerequisite to investment and trade, for the legal system and policies of a country may be quite inhibitory without being at all discriminatory. This truism has led, for example, to the development of the trade agreement device, now expanded into the GATT,[48] to effectuate progress in the

[47] The moderation of the treaties, and their avoidance of interference with domestic policy except to the extent of assuring the alien a basic measure of protection on a reciprocal bilateral basis, in conformity with international usage, undoubtedly account for the tolerant regard which many proponents of the so-called Bricker Amendment aparently hold for these treaties, notwithstanding that they create obligations with respect to many matters over which the several states exercise legislative authority. The roll-call vote by which the Senate gave its advice and consent to ratification of a group of five of these treaties, on July 21, 1953, at the height of the controversy over the Amendment, was 86 yeas to 1 nay (*Congressional Record* for that date, p. 9623). Senator Bricker has testified that the Amendment is not in his judgment calculated to interfere with the conclusion of such treaties (*Hearing before the Senate Judiciary Subcommittee on S.J. Res. 1 and S.J. Res. 43*, 1953, p. 8; *Hearing before Senate Judiciary Subcommittee on S.J. Res. 1*, 1955, pp. 297-98); and similarly Dr. George Finch, a leading expert witness in favor of the Amendment, has challenged the opposition's fears lest the Amendment make impossible the conclusion of such treaties in future (1955 *Hearing*, p. 506).

[48] The General Agreement on Tariffs and Trade, concluded at Geneva in 1947, to which 37 countries are now party. For text, with proposed revisions, see Department of State brochure of March 1955; and for a brief explanatory account, Department of State Publication 5813, April 1955. It is in force generally through a "Protocol of Provisional Application". Its status in the United States is that of an executive agreement, on authority derived from the Trade Agreements Act; and Congress has so far taken the position, in the domestic controversy over the GATT, that it neither approves nor

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absolute lowering of duty rates and the general level of barriers to international trade. But so far there has not evolved any feasible device for accomplishing results in the field of investment comparable with those sought through the trade agreement–GATT mechanism in the field of trade.

The principal criticisms which might accordingly be directed at the treaties concern their failures to provide stronger or more specific rules, especially as regards the investor. A list would include the following: (1) The extent to which particular treaties recognize "screening", that is, a signatory's reserved right to determine whether particular investments by foreigners will be allowed (a departure from that aspect of the national-treatment principle which assures the treaty alien a right equally with the citizen to initiate an investment).[49] (2) Failure to require that no established interest of any kind may be impaired by government action except upon payment of prompt, just and effective compensation.[50] (3) Failure to prohibit the nationalization of private industry or, at least, to require that there may be no expropriation until after the compensation has been agreed upon and paid.[51] (4) Absence of specific commitments regarding

disapproves it. There is projected an Organization for Trade Cooperation (OTC), to provide a regular international machinery for administering the GATT; and United States participation in this Organization will require congressional authorization.

49 The National Foreign Trade Council objected to the Ethiopia treaty, for example, because of its acknowledgment of the screening right (Letter to the Senate Committee on Foreign Relations, reproduced on p. 21 of the *Hearing* on that and other commercial treaties held before the Subcommittee of that Committee, May 9, 1952). Screening is without prejudice, of course, to the important treaty principle of national treatment for enterprises after their initiation.

50 See, for example, the suggestion of National Foreign Trade Council, *ibid.*, p. 22. The treaty rule parallels the United States federal constitutional requirement as to "property taken". The greater obligations entailed by a commitment to pay for impairment of any established interest would surpass present federal law and practice (e.g., with regard to "consequential damages"). Further, see Department of State memorandum, *ibid.*, p. 28, in reply to the Council's suggestion.

51 The treaty does not attempt to outlaw any expropriation, but merely to regulate the manner and consequences of an expropriation; and it is doubtful whether an attempt to forbid expropriation would be considered a tenable restraint on sovereignty. A prior-payment commitment, for its part, would preclude the federal "declaration of taking" procedure.

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the entry of foreign technical personnel, and of clearer rights for American accountants and other professional categories.[52] (5) Insufficiently categorical guarantees regarding the remittance of earnings and the repatriation of capital.[53] (6) Lack of precision and advance in the rule regarding the awarding of government contracts and concessions.[54]

These and other possible shortcomings, which may be found to exist notwithstanding that the current treaty series is probably the most far-reaching and affirmative that has yet been extensively negotiated by any country, are ascribable to several causes which on the whole would appear to be unavoidable, at least under present circumstances. One cause, the comprehensive nature of treaties of this type, has already been mentioned. A second would lie in the intractability of certain of the subject matters: that is, the bafflement encountered in attempting to draw up exact rules that would be realistic and susceptible of practicable application over a future period. This would be true, in part at least, of items (5) and (6) listed above, lacking some kind of viable joint administrative machinery yet to be invented. A third cause lies in the fact that, as these treaties are negotiated through the free-will consent of sovereign nations, and by the very nature of the case represent self-agreed limitations on each country's freedom of action, they are perforce confined to reasonable commitments which governments can prudently see their way clear to assuming as a matter of enlightened self-interest. Governments can hardly be expected to be

[52] Federal law prior to 1952 authorized treaty provision for special entry privileges only for international traders, but in that year an additional category was provided for the principal investor. See 101(a) (15) E (i) (ii) of the Immigration and Nationality Act of 1952. See Robert R. Wilson, "Treaty-Investor Clauses in Commercial Treaties of the United States", 49 *American Journal of International Law* 366-70 (1955). At the time the Act was under consideration, a spokesman for the National Foreign Trade Council recommended the inclusion of a clause also on technical personnel, but Congress did not accept it. *Joint Hearings before the Subcommittees on the Judiciary . . . 82d Cong., 1st Sess. . . . on Bills to Revise the Laws Relating to Immigration*, etc., 1951, pp. 314 *et seq.*

[53] The treaty stipulates only a rather imprecise "reasonable provision" in the light of the exchange stringency situation. *Supra*, note 9.

[54] The treaty rule—Article XVII, par. 2(b), of Netherlands treaty, for example—provides only for "fair and equitable treatment, as compared with that accorded" to third countries.

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eager to bind themselves to rigid or special-privilege engagements to the alien when there is no necessity for their doing so. A corollary to the doctrine of sovereign equality of nations, moreover, is that the treaties must be mutual in their provisions, with the consequence that they can in general contain only such commitments as the United States itself is prepared to undertake.[55]

Treaties of the type here under discussion do not entail bargaining for concessions. Rather, they deal with matters of right principle, to which both signatories are willing to subscribe formally; and they can in the large serve only to define and reduce to stable international engagement an existing state of national policies rather than to create new policy. A country, therefore, which is persuaded that it must particularly retain control over the extent to which aliens may be allowed to acquire economic influence within its boundaries is not likely to be prepared to waive its "screening" rights in favor of the open door, even with respect to the ordinary run of commercial and industrial activities regarding which the United States advocates a "no-screening" rule in its standard treaty proposals. Other countries, while admitting that there should be competitive equality between the alien and the citizen in initiating investments, and thus agreeing in principle with the open-door approach, may nevertheless nurture fears lest the unregulated entry of foreign capital during times when they are very short of dollar exchange might allow certain investments to be made which will create demands for remissions of earnings out of proportion to the net contributions such investments make to the national economy.[56] On the other hand, reservations to the

[55] Special adjustments, however, have to be made to care for the federal system, as regards the meaning of "national treatment" as applied to companies—e.g., Netherlands treaty, Article XXIII, par. 4 (a)—for which there is usually no equivalent on behalf of the other country. See also the special provision regarding ownership of real property likewise occasioned by the United States federal system, included in a number of the treaties (Article IX, par. 2, Netherlands treaty), the only firm right which the United States is prepared to accord being with regard to leasehold rights as to property needed for treaty-authorized purposes (*ibid.*, Article IX, par. 1).

[56] Certain balance-of-payments reservations are accordingly found, relative to the introduction of capital, in the treaties with Denmark (Protocol, par. 7); Japan (Protocol, par. 6); Germany (Protocol, par. 16); and the Netherlands (Protocol, par. 14).

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national-treatment rule as regards the initiation of an investment must also be maintained with respect to certain sensitive areas of business activity (for example, deposit banking) because of the alien disabilities which are present in state or federal law or administrative regulation on the United States side.[57] Similarly, shortcomings of the nature of those listed as (2), (3) and (4) above, even were they correctible with the consent of foreign countries, are necessitated by the inability of the United States to go further than the treaties actually provide, either because stronger rules would pass the bounds of established law and practice or because the federal government is unwilling to use the treaty power to override conflicting state legislation, actual or potential, in the premises.

Conclusion

Perhaps as time goes on, ways may be found for remedying or narrowing some flaws which may be said to persist in the treaty structure, even after ten years of extensive and varied negotiating experience and of experimentation with ways of making these instruments more effective. Certainly a comparison of successive texts appearing during the ten years, especially those completed during the first half of that period, will reveal evidence of a continuing effort to improve their content over that of the China treaty of 1946—which set the pattern for the series after World War II. For example, since that pioneering instrument, there has been a thorough reorganization and restatement of the provisions, with a view to better clarity and conciseness, fewer ambiguities and qualifications. The rights of corporations to engage in the normal run of business activities, on a national-treatment basis, have been defined in more legally sufficient terms; [58] and formulae have been devised for viably protecting those categories of enterprise which because of their sensitive nature (for example, deposit banking, as above mentioned) are as a matter of

[57] Examples in the federal jurisdiction: 16 U.S.C. 797(e) (hydroelectric licenses); 46 U.S.C. 19, 252, 802, 1151(c), 1159, 1171, 1244(c) (shipping operations); 47 U.S.C. 310 (radio licenses); 49 U.S.C. 401 (13), 521(b) (1) (domestic airlines).

[58] In the China treaty, the firm legal commitment was most-favored-nation treatment, accompanied by a general policy objective of "adhering generally to the principle of national treatment . . . in conformity with the applicable laws and regulations." Article III, par. 3.

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course excepted from the operation of the national-treatment clause applicable to other businesses.[59] Greater definition has been given to the rights of arrested persons; there have been added a clause to provide for the right of free communication and a paragraph regarding social security benefits; and rights with regard to legal aid and the *cautio judicatum solvi* have been spelled out. The rule with regard to expropriations has been amplified; and certain provisions to deal to an extent with the phenomenon of the state as entrepreneur have been devised. The provisions on exchange controls and commercial arbitration have been recast into more realistic and effective terms; greater attention has been given to management's right to employ essential personnel without government interference; and it was also during this period that a provision on restrictive business practices was introduced.

But there are limits on the lengths to which treaties can be carried; indeed, only three innovations of significance (saving, of course, minor improvements, clarifications and negotiated adjustments) have appeared in those signed since 1951; and none since the treaty of 1953 with Japan.[60] Since the negotiating prototype thus has perhaps attained its inner growth for the time being, subject always to further perfections in detail suggested by additional study and experience, prospects for progress in the immediate future perhaps lie more in the direction of an increase in the treaty network

[59] The provision developed to this effect, which had its origin in a general injunction against impairing established interests originally included in the Uruguay treaty of 1949 (Article IV), and in a special provision regarding banking in the Colombia treaty (Protocol, par. 5), first apeared in the treaty of 1953 with Japan: "However, new limitations imposed by either Party upon the extent to which aliens are accorded national treatment, with respect to carrying on such activities within its territories, shall not be applied as against enterprises which are engaged in such activities therein at the time such new limitations are adopted and which were owned or controlled by nationals and companies of the other Party." Article VII, par. 2.

[60] The provision mentioned in the preceding note; the clause on visa rights for investors, first authorized by Congress in 1952; and a special provision regarding a free market as to marine insurance (e.g., Article XV, par. 5, Netherlands treaty). On the other hand, two provisions previously carried were abandoned: the article regarding exemption from compulsory military service (which last appeared in the 1950 treaty with Ireland); and a provision regarding the practice of professions (excluded by Senate reservation from the treaties signed in 1951 and 1953, and thereafter omitted in compliance with the Senate's views).

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numerically than in basic improvements in the content of the typical product. But what rate of progress might be expected in completing negotiations with additional countries is impossible to predict. These treaties, unspectacular and seemingly simple in their terms though they be, cut across the interests of all ministries of a government and potentially pose many problems requiring careful study by any government contemplating a negotiation. In awaiting attention, they must compete with an unprecedented welter of demands, critical and otherwise, upon the time and energy of governments, in the present state of world affairs. They must do so, moreover, in a day when their making has apparently lost, perhaps temporarily, the popularity it previously enjoyed; [61] and when their underlying individual-initiative premises are singularly under question in many quarters.

In the circumstances, the record of accomplishment of the treaty program to date, compared for example with that of similar programs conducted in past periods,[62] is by no means unimpressive. This is so in terms both of the number of treaties brought to signature and of their contribution to the formulation of an enlightened body of law and practice regarding the treatment of the alien and his legitimate interests. They vary greatly among themselves in detail, as befits instruments individually and consensually negotiated, but together they form a pattern bonded by a common core of viewpoint and purpose. It is this, rather than the mere fact of sixteen individual treaties, which gives them cumulatively their larger significance.

HERMAN WALKER, JR.

PARIS, FRANCE

61 Whereas, prior to World War II, there were many examples of treaties of this general type in the practice of many countries, the United States appears to be the only country which has systematically sought such treaties during the past ten years.

62 In the two decades between the two World Wars, the United States concluded such treaties with twelve countries. For a comparable decade of treaty activity, it is necessary to go back to the 1850's, when something over a dozen such treaties were concluded, including some of lesser scope than the full-length prototype of the day.

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WEST GERMAN TRADE UNIONS AND DISARMAMENT

THE controversial issue of rearmament has created a fundamental division within West Germany. Many organized groups have voiced their disapproval of a basic step taken by the Adenauer government designed to bolster the defense of the West. Among these, organized labor has frequently been in the vanguard of the opposition. Its fluid attitude, neither embraced by all within its fold nor as decisive as that of a political party engaged in legislative warfare, had a bearing on an issue which transcended the parliamentary debate and became a topic for intensive discussion throughout the land and abroad.

This article is intended primarily to consider the position of the most important labor association, the German Trade Union Federation (*Deutscher Gewerkschaftsbund,* DGB), toward the issue of rearmament, and it will seek to correct a frequently held misconception that the Federation consistently and unanimously opposed rearmament. A meeting of minds on such a controversial question would have been difficult to achieve under the most propitious circumstances, but in this instance three interrelated factors compounded the lack of unity: schisms concerning power and policy, ideology, and the measure of political activity to be legitimately exercised by the trade unions.

In terms of power and policy, the DGB, the largest labor federation in post-war West Germany, comprises more than six million workers in sixteen constituent industrial unions. The DGB administrators, elected by union delegates at periodic congresses, tend to set over-all policy in consultation with the chairmen of the unions; however, the latter enjoy a substantial degree of independence and authority without interference from the top leaders.[1] Dissension is likely to

[1] For two excellent analyses of the DGB, see Otto Kirchheimer, "West German Trade Unions", *World Politics,* VIII, No. 4 (July 1956), 484-514; and Clark Kerr, "The Trade Union Movement and the Redistribution of Power in Postwar Germany", *The Quarterly Journal of Economics,* LXVIII (November 1954), 535-564.

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arise in such a federative structure. We must therefore assess in this case study the rôle of the policy-makers and the measure of their initiative and responsiveness to the rank-and-file members; in short, to gauge the degree of cohesion and discord within this fundamentally democratic structure.

In terms of ideology, the DGB has assumed officially an attitude of neutrality toward political parties in the light of the diverse political creeds held by its members. Nonetheless, a vast majority, out of historical tradition and identity of interests, embrace the tenets of the Social Democratic party (SPD), while only a minority, perhaps 10 per cent, support the Christian Democratic Union (CDU).[2] The preponderance of Socialists within the unions naturally has led to a *rapprochement* with the SPD on many basic issues of national conduct. Yet occasionally the DGB, in disagreement with the SPD, has supported the policy of Chancellor Adenauer and his party, the CDU. Thus, it may be of particular interest to consider the relationship between the DGB, on the one hand, and the SPD and the CDU, on the other hand, concerning the question of rearmament.

In terms of political activity, the DGB is searching for increased stature and power in the German body politic, and desires to influence the course of a neo-capitalist system which it views, at best, with some misgivings. Traditionally it has exerted political pressure upon the executive and legislative branches of the government to realize only its goal of economic democracy. Rarely has it initiated similar pressure on an issue primarily political in nature. The protracted debate in labor and party circles relating to this problem should prove valuable in appraising the rôle of interest groups in a political society.

Hence, as we begin to sketch the historical development of the trade-union attitudes toward rearmament during three significant periods of controversy, the European Defense Community, the Paris pacts, and their aftermath, attention must be focused on the interplay of power and policy, ideology, and political activity.

[2] On the nine-man DGB Executive Committee, consisting of the top administrators, seven are SPD members; among the chairmen of the sixteen constituent unions, all are SPD members. Many union officers are also members of the *Bundestag* (the lower house), mostly elected on the SPD ticket, thus largely nullifying the need for lobbying.

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I. THE EUROPEAN DEFENSE COMMUNITY

In the initial post-war years, Allied policy was designed to prevent a rebirth of German militarism. Their own country in shambles, the Germans welcomed the Allied decision. However, with the eruption of the Cold War and the subsequent establishment of the North Atlantic Treaty Organization, the Western Allies privately and reluctantly concluded that sooner or later the Germans would have to contribute their share toward an effective Western defense system.

The trade unions, in the throes of cementing a country-wide organization, for a considerable period paid scant attention to matters military. It was not until January 1950 that the DGB took a position. The Executive Committee, echoing Western Allied official opposition to German re-militarization, warned that rearmament would intensify the dangers of a rebirth of militarism and of war by generating further friction between the Western and Eastern camps, and by antagonizing France without creating an effective bloc against threatened Soviet aggression. However, the Committee did not reject remilitarization under all circumstances, for it believed that Germany would want to contribute her share toward the defense of a united, free Europe aided by the United States.

The Western Powers radically shifted their attitude after the outbreak of the Korean war and publicly called upon the Germans to rearm. Inculcated during the previous five years with compelling demilitarization arguments, most Germans were reluctant to heed this latest advice. But their leaders concurred with elaborate plans being drafted to absorb the country into the Western perimeter by creating a supranational army under a European Defense Community (EDC). Simultaneously, negotiations were begun to grant Germany her sovereignty under contractual agreements provided that she join the EDC.

In November 1950, United States High Commissioner John J. McCloy appealed directly to labor leaders to accept this *volte-face,* after the DGB Executive Council (consisting of Executive Committee members and the chairmen of the sixteen unions) had just reasserted its conditional opposition to the revival of military forces.[8]

[8] *DGB News Letter,* November 25, 1950.

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By 1951 the leading DGB policy-makers became progressively less critical of rearmament. An examination of the causes for this change reveals several elements: first, the remilitarization campaign in the Soviet Zone of Germany convinced many militant anti-Communist labor leaders that West Germany must be defended by its own units; second, Communist union officers were cleverly exploiting the void left by the death of President Böckler in early 1951 to propagandize assiduously against rearmament; third, the newly elected president, Christian Fette, and other Executive Committee leaders, although nominal Social Democrats (except for two CDU members), preferred to pursue an independent political course, in order not to commit themselves too strongly to the SPD or be accused—as the SPD had been—of playing into the hands of the Communists; and fourth, the union leaders perhaps hoped that the Adenauer government, for a *quid pro quo* labor endorsement of EDC, would support favorable economic legislation. Therefore, it appears that the president and leading administrators would have preferred to range the entire organization squarely behind the movement for a defense contribution, but were deterred principally by the significant number of officials and members who did not share their views.[4]

Why did these lower echelons choose to follow the Social Democratic high command in its well-publicized anti-rearmament drive? The Socialist trade unionists have an emotional affinity for their political counterpart movement, and when confronted by the dilemma of sustaining two feuding organizations they occasionally turn to the SPD, as on this issue of immediate significance to them. Imbued by previous generations with a socialist antimilitarist tradition, evident even in the Weimar period, their basic feelings were inimical to rearmament.

The first telling expression of defiance of the Federation officials came from the Bavarian trade unions, representing workers in an area traditionally resentful of dictation from Bonn or North Germany. At the Regional Conference on

[4] At an Executive Council meeting in January 1952, Federation leaders expressed a conciliatory attitude; they considered parliament to be more competent to deal with rearmament than the trade unions. *Welt der Arbeit* (Cologne), February 1, 1953; official DGB weekly, hereafter referred to as *WdA*.

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February 10, 1952, two national officers, Fette and Hans vom Hoff, head of the economic department, amid many catcalls, defended their conditional acceptance of rearmament and denounced the alarming adherence in many circles, labor included, to the neutralism and "count-me-out" (*ohne mich*) movements. After an acrimonious debate, the militant delegates urged the DGB to institute an open discussion among all trade unions and initiate preliminary measures against a defense contribution.[5]

The reaction of several constituent, national unions to the Bavarian Conference was mixed. Of the six most important unions, three, the public services, chemical, and textile workers with a delegate strength of 104 at the next DGB Congress, supported the Bavarian position, while three others, the metal, mining, and railway workers with a delegate strength of 164, opposed it.[6] The lack of accord reflected the divergent attitudes of the national union chairmen who often successfully committed their unions to a position on rearmament based upon their own convictions and their ability to influence convention delegates. As a matter of fact, some chairmen, personally against rearmament, believed that union unity could be maintained only if no official stand were taken at all.[7]

What were the origins and the nature of the multiple arguments forged by the "opposition" to rearmament within the DGB? The arguments originated within labor's own ranks or were imported principally from the Social Democrats and even from the Left wing of the British Labor party. Thus, Aneurin Bevan's thesis that Western Europe stood less in danger of Soviet attack than of Communist penetration of its economic and social institutions was well received in labor circles. German workers were equally impressed by the contention that the burden on the economy resulting from rearmament would be unfairly distributed and ad-

[5] *WdA*, February 15, 1952.

[6] "Die Gewerkschaften und der Verteidigungsbeitrag", in Veröffentlichungen des Instituts für Staatslehre und Politik, ed., *Der deutsche Soldat in der Armee von morgen* (München, 1954), IV, 176.

[7] "Rede des Kollegen Hansen auf der Sekretärskonferenz in Mülheim/Ruhr am 22. Februar 1952" (mimeographed by the North Rhine-Westphalia regional office), p. 2.

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versely affect their standard of living. Then too, the creation of a leviathan military establishment in the face of an atomic build-up would be strategically useless, at best, or would lead to war, at worst.

Moreover, according to the opposition, any military organization is inimical to democracy. Only in those countries with a firm democratic tradition is popular control of the army feasible. Germany, not yet falling in this category, would once again witness the rise of a despised militarist clique, which might engage in strikebreaking activities, attempt to subvert the parliamentary régime, or embark upon military adventures to reunify the country. Germany must be given time to develop her democratic institutions before she created new armed forces.

The opposition also linked rearmament to the primary political goal of German reunification. It cannot be assumed that Socialists and unionists are opposed to rearmament because they are more desirous of reunification than other Germans, but rather because they fear the negative attitude of the Soviet government toward reunification, should rearmament become a reality. A secondary consideration, although rarely expressed, is the knowledge that both organizations would measurably be strengthened by the influx of the Protestant, industrial workers of the present Communist East Zone.[8]

These manifold arguments made a significant impact on labor's rank and file in the ensuing years. Similarly affected were regional and local union officers when they met with the Federation Executive Committee and Council at a special session on February 28 and 29, 1952. That the Federation policy-makers were overruled in their conditional support for the Chancellor's defense effort was manifest in the communiqué which urged the government to call an immediate election to measure the will of the people and to resign if it thus lost a vote of confidence.[9] In effect, this communiqué for the first time endorsed a Social Democratic

[8] Letters to this writer by a labor theoretician, Professor Wolfgang Abendroth of Marburg University, June 20, 1956; Adolf Ludwig, DGB chairman, Rhine-Palatinate region, June 18, 1956; and Heinz Seeger, chairman, Wood Workers Union, June 26, 1956.

[9] *WdA*, March 7, 1952.

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demand in the realm of defense, and likewise demonstrated convincingly the inability of the high-ranking labor officials to achieve conformity within the ranks. Adenauer, enjoying a comfortable majority in Parliament, paid little heed to the opposition request, although he embarked on a publicity campaign to emphasize the peaceful purpose of defense.

In May 1952 the EDC pact and the contractual agreements were finally signed in Paris and Bonn respectively, but then began the protracted and abortive efforts to obtain ratification by the signatory states. In Germany the SPD headed the opposition in parliamentary debates and in a test of the constitutionality of the EDC, but the trade unions, in spite of opposition outbursts in February, resumed their rôle of straddling the fence.

Not even the Second Congress of the DGB, which met in Berlin in October 1952, led to any revolutionary upheaval in policy, although it produced a drastic shake-up in leadership. The opposition apparently believed that the delegates were not ready to endorse an outspoken anti-EDC candidate for president, and therefore agreed upon the nomination of Walter Freitag, the co-chairman of the Metal Workers Union, who was considered more sympathetic than Fette to the SPD ideals. The vote for the presidency is suggestive of the smoldering conflict within the organization: Freitag received 184 votes to Fette's 154 with 18 abstentions. So far as rearmament is concerned, the switch in the high command focused attention on serious disagreements: Fette would have preferred the unions to back the Chancellor and EDC; Freitag, more realistically sensing the internal opposition, considered it inopportune that a position be taken. The delegates endorsed the new president's stand.[10]

When both houses of Parliament assented to the EDC and Bonn contractual agreements in the spring of 1953, the DGB significantly failed to comment. In fact, the Federation maintained silence on this topic for the next eighteen months. Ultimately, the failure of the French to ratify EDC in August 1954 spelled its doom, and Western diplomats

[10] *DGB. Protokoll. 2. Ordentlicher Bundeskongress, Berlin, 13-17 Oktober 1952* (Düsseldorf, 1952), pp. 115-116, 158-159; see also S. Neumann, "Führungswechsel im Deutschen Gewerkschaftsbund", *Geist and Tat*, VII, No. 11 (November 1952), 337-339.

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hurriedly sought another solution. This was first formulated at the London Conference of September-October 1954, which granted West Germany her sovereignty, and the right to join NATO and the Western European Union provided that she formed a national army under the control of NATO.

In summation, the first epoch of controversy over the European Defense Community was marked by an inconclusive power struggle within the trade unions concerning the direction of policy; by a doctrinal dispute between the top leaders whose sympathy for the Western position led them to a pro-rearmament stand and the opposition elements whose sympathy for the SPD position was unconcealed; and by a surprising lack of political activity to quash the EDC on the part of the anti-rearmament battalions in the trade-union movement.

II. THE PARIS PACTS

No sooner did the diplomats adjourn the London Conference than the often submerged elements within the German trade unions came to the surface and engaged their leaders and the government in battle. Portents of a change unwelcome to Freitag and Adenauer already had come at the DGB Youth Congress (September 24-26, 1954) at which all the delegates, representing 670,000 unionists and the sentiments of many youth outside the labor movement, rejected rearmament.

Thereupon, at the Third Congress of the DGB, meeting from October 4 to 9 in Frankfurt, President Freitag was on the defensive. He reviewed the record of his administration and justified his thesis of the exclusive jurisdiction of political organs in the matter of rearmament. The temper of the discussion indicated considerable disagreement with Freitag's views, although he was reëlected as president. Perhaps contributing the most trenchant argument, Willi Ginhold, head of the DGB youth department, stressed youth's lack of faith in the successful creation of a democratic army in the decade to come and its lack of confidence in the type of reactionary officers who, trained in the Nazi army, would now assume the command posts.

The delegates thereupon endorsed a motion disapproving of a national army as envisaged at the London Conference,

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but they failed to follow the lead of the Youth Congress in a total rejection of rearmament, as evidenced in the final paragraph of the motion which left the door ajar for future military participation once "all possibilities for negotiations have been exhausted in an endeavor to bring about an understanding between the nations and to effect the reunification of Germany." [11]

The Congress resolution marked the triumph of those forces in the DGB—the young members, the Bavarian bloc, and several dynamic national union chairmen—that opposed the DGB Executive Committee leadership on this issue. In October 1954 they finally converted the vast majority of delegates to their point of view, owing to dissatisfaction with the top leaders, stagnating membership rolls, and the lack of enthusiasm for rearmament among the membership.

The Adenauer administration, poised to sign the Paris pacts implementing the London Conference package deal, viewed with unconcealed dismay the Congress decision to enter the political fray. Theodor Blank, then Commissioner of Defense and a former trade-union leader, countered one of the key DGB objections by insisting that labor did not have to fear the return of pro-Nazi officers to command posts, because a supervisory personnel board would screen all ranking appointments. The unions should not repeat the error they had committed during the Weimar Republic era of refusing to coöperate with the army, warned Blank, but instead should aid the authorities in their efforts to establish a democratically controlled military machine.[12]

The Commissioner's statement had no effect, as one national union after another endorsed the decision of the Congress in similar resolutions. Indeed, labor's opposition campaign in the following months radically increased in tempo and intensity in an attempt to forestall legislative acceptance of the Paris pacts. Tactics veered from pious reso-

[11] *DGB. Protokoll. 3. Ordentlicher Bundeskongress, Frankfurt am Main, 4-9 Oktober 1954* (Düsseldorf, 1954), pp. 806-807, 578-585; see also Helmut Wickel, "Drängen auf Aktivität", *Gewerkschaftliche Monatshefte*, November 1954, pp. 641-642; Klaus-Peter Schulz, "Die Führungskrise des DGB", *Deutsche Rundschau*, LXXX (1954), 1128-1131.

[12] According to one labor spokesman, union leaders had urged members to join the *Reichswehr* during the Weimar era, but workers were "fed up" with militarism. "Rede des Kollegen Hansen", pp. 4-5.

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lutions to street demonstrations. As heretofore, young, militant trade unionists and Social Democrats spearheaded the drive by organizing a multitude of protest meetings and parades throughout the country.[13]

Symptomatic of government concern was the discussion on December 17, 1954, between Adenauer and Freitag extraordinarily held at DGB headquarters in Duesseldorf, rather than at Bonn as conventional protocol would have dictated. Appealing for support, Adenauer seemed apprehensive that continued labor resistance to, and possibly noncompliance with, rearmament measures might jeopardize effectively the yet unborn military establishment.[14] Ostensibly Freitag could not commit himself for the organization, since no decision had been reached at the Congress on what stand the DGB should take once the *Bundestag* ratified the Paris pacts.

As a result of relentless pressure by the rank and file, the national unions and regional organs were less interested in long-range strategy than in immediate tactical operations to win nation-wide popular support and block legislative action. But the failure of the Congress to discuss means of implementing its anti-rearmament resolution and the indifference of national headquarters led to a lack of coördination. The proposal by some radical members to call a general strike was rejected in no uncertain terms as a provocative attack on parliamentary democracy by national and regional union leaders who themselves opposed rearmament.

More pragmatic proposals initiated by Bavarian unionists to prepare plebiscites in all German *Länder* (states) where feasible, conduct a secret vote among the union membership, and grant legal protection to those members who would refuse military service were endorsed by other regional leaders, but not by the DGB chiefs.[15]

In another move to block ratification of the Paris pacts,

[13] Labor demonstrators in Munich carried signs proclaiming that "their grandfathers had served in Kaiser Wilhelm's army in World War I and had been killed, their fathers had served in Hitler's army in World War II and had been killed and they themselves did not intend to repeat the experience." *New York Times*, November 25, 1954.

[14] *New York Times*, December 18, 1954.

[15] *Süddeutsche Zeitung*, January 17, 1955; "German Labour in Ferment", *The Economist* (London), January 22, 1955, p. 282.

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leading Social Democrats, trade unionists and theologians, meeting in St. Paul's Church, Frankfurt, on January 29, issued a "German Manifesto" which warned of the negative effect of the pacts on reunification. In a keynote address, DGB Vice President Reuter publicly joined the rearmament foes, but noted the fact that he spoke as a private individual and not as a representative of the Executive Committee.[16] Yet the Manifesto was soon signed by the chairmen of the national unions and by all except one (Scharnowski of Berlin) of the regional chairmen.[17]

The mass of organized labor and the Social Democratic party were in the unenviable position of waging the battle almost single-handedly. They could not even expect a modicum of support from abroad, where one major labor and socialist organization after another endorsed reluctantly, and certainly not with unanimity, the principle of German rearmament. This division indicated the tenuous nature of the international bonds linking the organizations when pitted against their national interests. Thus, American labor federations (AFL and CIO) publicly and privately urged their German counterpart to support a military build-up, but the DGB leaders were forced into the anomalous position of having to insist, despite their personal sympathy with the Western thesis, that the national unions must arrive at their own decisions.[18]

The crucial debate in the *Bundestag* only a week off, the national unions and regional organs demanded that the DGB leadership abandon its laissez-faire policy and assume a more positive stand against remilitarization. They were successful; the executive bodies agreed on February 17 upon an important resolution which, incidentally, mirrored the position of the SPD. The resolution urged the suspension of ratification until new high-level four-Power talks were held, and warned of unfavorable domestic consequences of remilitarization.[19]

[16] *Frankfurter Rundschau*, January 31, 1955.

[17] Otto Kirchheimer, "West German Trade-Unions: Their Domestic and Foreign Policy", in Hans Speier and W. Phillips Davison, eds., *West German Leadership and Foreign Policy* (Evanston, 1957), p. 170.

[18] *DGB News Service*, February 9, 1955; *New York Times*, February 8, 1955.

[19] *DGB News Service*, February 17, 1955.

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The reaction to the DGB resolution came swiftly and disapprovingly from Chancellor Adenauer and other government and CDU spokesmen, based on political expediency, a fundamental disagreement with the DGB concept of the rôle of trade unions in politics, and perhaps a fear that some CDU lawmakers, friendly to labor, might not maintain party discipline and vote instead against the Paris pacts. In any case, the government rejected the renewed attempt of the Federation to influence decisions for which, according to its point of view, Parliament was exclusively competent. It charged the DGB, by closely conforming to the SPD position, with a violation of its proclaimed political neutrality, and intimated that if the organization wished to safeguard its internal unity, it must confine itself to basic economic and social problems. It likewise questioned, on the basis of recent CDU rallies, the DGB claim that the entire membership of the unions had approved the Federation's position.[20]

In turn, labor spokesmen objected to the government arguments. Last-minute warnings, timed to coincide with the opening of the crucial debate in the *Bundestag*, came from Munich, Bavaria, where thousands of demonstrating trade unionists were told by their chairman, Max Woenner, that ratification of the Paris pacts would not end the fight. During the legislative debate, CDU and SPD representatives clashed again over the problem of the rôle of labor in politics. But, on February 27, 1955, after the presentation of the well-known and diametrically divergent points of view concerning the Paris pacts, the government won its expected majority. The unanimous vote by the CDU offers conclusive evidence that, faced with the dilemma of choosing between two conflicting loyalties, those CDU legislators favorable to labor preferred to maintain party discipline and stand by the government on this foreign policy issue.

The virulent campaign to stem the rearmament tide reached its crest in the battle over the Paris pacts. Then, as not before or since, the trade unions were sharing the offensive with the SPD. The DGB leadership at first refused to participate in the political fray but at last had to identify

[20] *Kölnische Rundschau*, February 18, 1955; *Stuttgarter Zeitung*, February 21, 1955.

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itself with the rank and file. On the other side, the government, too, could not disregard the high-pitched political activities of the unions which it considered improper and even dangerous. Could a reconciliation between those opposing forces be achieved in the aftermath of the battle?

III. THE AFTERMATH

Attention in government circles was focused on the reaction of the SPD and the DGB to the verdict of the legislature. Would the two organizations bow to it and coöperate in the establishment of the new armed forces or would they attempt to vitiate it by arousing public opinion through demonstrations, mass petitions, and other protest actions? In the context of historical experience, the answer should not have been in doubt. Both groups, having tasted the bitter fruits of totalitarianism, clung more tenaciously than ever to democratic principles and to the defense of the democratic state. The SPD continued to maintain its critical attitude toward the Paris pacts, but admonished its members to abide by the law of the land and publicize their protests only within the legal framework.

The DGB, rent by the familiar schism between most members of the Executive Committee and a bloc of national and regional union leaders, demonstrated once again an inability to close its ranks and present a united front, although both factions were willing to recognize the legislative action. The union leaders were unhappy about the readiness of the Executive Committee to comply with governmental policy without presenting an effective alternative. One regional chairman reminded his hearers of the lack of finality about any piece of legislation, and urged amendments to the existing law.[21] Others called upon the executive bodies to meet in order to reappraise the situation. When the top DGB leaders did not heed this request, the chairmen of several powerful national unions, at their respective conventions, denounced rearmament as a danger to democracy and to the social foundations of the Republic, and solicited the government to proceed immediately with negotiations on

[21] DGB Landesbezirk Nordrhein-Westfalen, *Landesbezirkskonferenz am 2. und 3. März 1955 in Köln* (Düsseldorf, 1955), p. 87.

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reunification.[22] Labor youth likewise evidenced a lack of homogeneity concerning a future course of action.

Not only did the DGB have to contend with this internal schism, but it also was faced with renewed conflicting pressures on the international scene—on the one hand, from Communists in the East Zone of Germany, and, on the other hand, from the anti-Communist Western labor organizations. The Communists, capitalizing on the dissatisfaction of West German youth with rearmament, exhorted young DGB trade unionists during and after the *Bundestag* debate to proceed to action in the form of strikes, demonstrations and plebiscites, and called upon them to escape military service by emigrating to the East Zone.[23] These appeals generally fell on deaf ears.[24]

After the DGB had formulated its anti-rearmament views, attempts were made by Western trade unionists through the International Confederation of Free Trade Unions (ICFTU) to work out a common platform on the Paris pacts. A conference was arranged by the ICFTU in late March in Brussels to which leading trade unionists from the United States, Germany and six other European countries were invited. The Conference ended in agreement on certain points, such as hope for world-wide disarmament, the need for a democratic reunification of Germany, and insistence on a democratic control of armed forces with an equitable social distribution of armament burdens, but was silent on the specific question of German rearmament.[25] However, two months later, at the Vienna Congress of the ICFTU, the DGB delegation endorsed a resolution urging the democracies to prevent aggression and war through adequate defense measures.[26]

22 The chairmen headed the Metal, Mining, Public Services, and Commerce, Banking and Insurance Unions. *Stuttgarter Zeitung*, April 30, 1955; *Frankfurter Rundschau*, May 2, 5, June 22, 1955; *Kölnische Rundschau*, August 7, 1955.

23 *Tribüne* (Berlin), March 7, 1955.

24 However, according to the Communists, several hundred Left-wing, minor officers of the SPD and DGB attended an all-German workers' conference in the East Zone on March 5. *Ibid.*

25 *Free Labour World* (ICFTU), April 1955, p. 23; "Stubborn German Trade Unionists", *The Economist* (London), April 2, 1955, p. 24.

26 ICFTU, *Report of the 4th World Congress held in Vienna, 20-28 May, 1955* (Brussels, 1955), pp. 416-417, 473-474, 489-490; *Die Quelle* (DGB *Funktionärorgan*), June 1955, p. 258.

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Although by the end of 1955 German organized labor seemed to be resigning itself reluctantly to the establishment of new armed forces, some national leaders and youth groups, who were dissatisfied with the lack of an official DGB censure on rearmament legislation, have maintained since then an overt opposition. In October 1956 these leaders met with success once again at the latest DGB Congress by obtaining an overwhelming majority vote for their anti-rearmament and anti-conscription resolutions.[27] Thus, their belief that labor ought to exert pressure upon Parliament in regard to legislation which they considered of crucial importance to the movement and its members was vindicated.

IV. CONCLUSION

Let us take stock and assess the trade-union stand on rearmament. Given the nature of the organization, with its complex structural autonomy and its institutionalized democracy, and given the lack of agreement among rival policy-makers and the rank and file, with their contradictory views concerning the rôle of labor in politics, the failure of the trade unions to present a united front should occasion no surprise. The DGB and its ruling group showed creditable flexibility on most occasions and were able to weather the storm.

We may attribute the flexibility to the fact that this case presents a notable disproof, even for the DGB, to the controversial "iron law of oligarchy" theory which claims that those in positions of authority are as a rule not controlled by those holding subsidiary positions, and that the membership is capable of no more than "yes" or "no" responses to the initiative which comes from their leaders.[28] In the case under study, the Federation leaders, cognizant that they could not embark on a course which met with maximal resistance from the lower cadres and knowing that no organi-

[27] *Stuttgarter Zeitung*, October 6, 1956. The DGB Youth Congress, April 1957, reflected similar opinions. *Frankfurter Rundschau*, April 8, 1957. But most DGB leaders during the federal election campaign in the fall of 1957 were noncommittal on the topic of rearmament.

[28] See Robert Michels, *Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracies*, tr. by E. and C. Paul (Glencoe, Ill., 1949).

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zation can maintain its effectiveness for long if rent continuously by clashes on crucial issues, yielded from time to time to the lesser officials and members whose views they did not share.

Initially, DGB officials Fette and vom Hoff attempted to range the DGB behind the Chancellor's defense efforts. Then, the next set of officers, in their desire to achieve internal unity, attempted to pursue a hands-off policy. In the end both attempts failed, for the socialist-influenced lower ranks desired, above all, to thrust the DGB into the anti-rearmament camp. Successive victories by this so-called "opposition" group marked the struggle: the Bavarian "revolt" of February 1952; the ouster of President Fette at the 1952 Congress; the adoption of the anti-rearmament resolutions at the 1954 and 1956 Congresses; and the mounting pressure upon the executive to call for rejection of the Paris pacts. And yet attention should be focused on two signal setbacks: on the lack of effective opposition to the European Defense Community, and on the continued reluctance of many high-ranking officers and most CDU union members to agree to the union policy actively formulated by the opposition. Thus the public, usually losing sight of the nuances, viewed the DGB as a composite unit opposed to rearmament. But, as we have indicated, this does not coincide with the facts. A judicious assessment would indicate only a partial victory for the opposition in its goal of uniting the DGB behind the anti-rearmament campaign.

The prime movers in the opposition bloc simultaneously endeavored to achieve two other purposes. The first was to propagate their views on defense among the people. Although the result of this effort cannot be measured empirically, it had a distinct impact upon an already reluctant population and served to confirm its many rational and irrational fears and hesitations. The second purpose was to obtain a majority against rearmament in the legislature. As its political ally in this cause, the Social Democratic party, a minority party, already was pursuing an identical policy, the opposition attempted to sap the strength of the government coalition by persuading those CDU legislators sympathetic to labor to cast their vote against the EDC and Paris pacts. But, given the political constellation and the voting

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discipline along party lines, the outcome of the defense bills could not have been in doubt.

The legislative debate delineated a cardinal problem facing the trade unions as well as other voluntary institutions in a pluralistic society—what forces in the nation should be the decision-makers and what rôles should be assumed by nongovernmental bodies? The classic theory, perhaps more accepted in Germany than elsewhere, that the representative organs of government, namely, the cabinet and parliament, alone should determine national policy and that the voluntary institutions should not partake in decisions affecting the entire population, was only partially accepted by some and contested by others in the labor movement.

The so-called "conservative" labor elements (in this context the DGB top leadership), opposed as they were to the anti-rearmament campaign, deemed it advisable in this case to restrict union activities to the traditional economic and social spheres and forego pressures upon the government in the political sphere; in this view they were sustained by government spokesmen of Christian-Democratic persuasion who, now that they were in power, advocated a maximum separation of state and societal bodies. The "radical" (or the opposition) elements, on the other hand, contended that because the state was progressively invading new spheres, labor's responsibility to its members and the nation required it to assume a greater rôle in political affairs, such as rearmament, which admittedly range outside the purview of the traditional type of unionism.

The lack of agreement on this basic issue precluded any sound reconciliation on the more specific problem of tactics and methods of influencing the administration and Parliament. The "conservative" leaders, on the basis of their hands-off attitude, aimed only at a modicum of action and, when they finally yielded to the insistent radical pressure from below, successfully channeled objections to rearmament into less effective moves. True, they agreed with the concept of the right to influence Parliament, but warned of its limitations and misuses. Therefore they repeatedly failed to consent to radical demands for action programs, and did not endorse mass demonstrations or token strikes for fear of

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subverting representative democracy. Some activities were consequently initiated at lower levels with less success than if DGB headquarters had officially sponsored or coördinated them. In spite of the lack of consensus on tactics, both factions mustered agreement on the welcome principle that no extremist measures, such as a general strike, be initiated to put pressure on Parliament or impede the implementation of statutes.

In the final analysis, the effectiveness of the position taken by organized labor cannot be easily assessed. It should be stressed that the numerically most powerful economic institution did not endorse, and in the end actively opposed, along with others, a key concept of the Chancellor's policy, with the result that he was on the defensive and lacked decisive country-wide support; and yet, despite various attempts to influence the legislature and despite support given the SPD, rearmament is step by step becoming a reality.

Whether, in the context of international power conflicts, the anti-rearmament position to which the DGB committed itself was morally and politically justified, and whether organized labor performed a service to the security of the nation, are matters outside the scope of this study. Naturally, many labor leaders of other European and American countries had their doubts. But a dispassionate judgment of the DGB position upon this key question would suggest that much maturity and responsibility were shown. In a crucial moment of post-war German history, the trade-union movement contributed to the nation's groping efforts to achieve democracy in content as well as form.

GERARD BRAUNTHAL

UNIVERSITY OF MASSACHUSETTS

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BURR, HAMILTON AND THE MANHATTAN COMPANY

PART II: LAUNCHING A BANK *

THE Manhattan Company, unlike other New York joint-stock companies of the period, obtained its charter of incorporation before it was established as a going business concern. In another respect the Company was also unusual; for, alone of the dozen business corporations in New York at the turn of the nineteenth century, the Manhattan Company's directors, who had been named in the law of incorporation as was customary, were preponderantly Republican rather than Federalist.

I

As the directors began their meetings in New York City less than two weeks after the charter was granted, reports circulated that Aaron Burr "governs everything by a decided majority among the directors" and "he is acquiring much influence & is disposed to profit by it."[1] It was on Burr's suggestion that the directors divided themselves into working committees on the various urgent matters confronting the new corporation.[2] A committee of three—two Republicans, Samuel Osgood and John Stevens, and the Federalist, John B. Coles—was assigned the high-priority issue of the projected water supply. To the unsuspecting it might have appeared a foregone conclusion, based on the nature of the charter obtained by the Company, that the water supply would be drawn from the Bronx River. Such was not the plan of Burr and his close associates, as is revealed in John Stevens' account of the prearranged decision to confine the water works to an inferior, less expensive source within the

* The background, legislative history and provisions of the charter of the Manhattan Company are analyzed in Part I of this article in the December 1957 QUARTERLY.

[1] Robert Troup to Rufus King, April 19, 1799, King Papers, XLVII, New York Historical Society.

[2] John Stevens to Robert R. Livingston, April 12, 1799, Livingston Papers, New York Historical Society.

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city. Stevens wrote to his brother-in-law, Chancellor Robert R. Livingston, leader of one faction of the Republicans and an original subscriber to 2,000 shares of the Manhattan stock:

> We had a meeting last night on the subject. Coles, as you may expect, was a strenuous advocate for the Bronx. Both Osgood and myself fell into his ideas so far as to admit it would probably be ultimately necessary to have recourse to the waters of this River. But that in the mean time, as a temporary expedient, to set about raising the water of the collect.[3] After a good deal of talk on the subject we have brought Coles to concur with us in this sentiment tho' it was with reluctance, as he observed, very justly too, that whilst the collect shall be found to answer the purpose in any tolerable degree, we shall remain content with it, and thus, he says, the poor Bronx will be neglected perhaps forever. Thus you may perceive that this Business is in proper train. I had some conversation with B. Livingston [another director], who seems to think we should make no decisive report [on a water supply], so that there may not be any immediate demand for money, which might of course be applied to other speculations. In this I can never bring myself to agree with him. I think it incumbent on us to convince our fellow Citizens that we are truly in earnest in the business, and to make every effort in our power to complete it during this season. I think it may be effected for less than 200,000 Dol^{s}. which is only one tenth of our capital. This will put the Citizens in good humour with us, but should we do nothing we shall raise a violent clamor ag^{t}. us. As to watering the streets it can never be expected from us, unless the Corporation [of the City of New York] agree to pay us amply.[4]

After discussion within the board of directors, publication of a report of the water committee, and solicitation of the views of the public, the Company decided, early in May, to use an old well near the Collect, and in 1800 a reservoir was completed on Chambers Street with a capacity of only 132,600 gallons instead of the planned 1 million.[5] The choice of

[3] A fresh-water pond with an unsavory reputation in the vicinity of later City Hall.

[4] Stevens to Livingston, April 12, 1799, Livingston Papers.

[5] Manhattan Company, *Background for Tomorrow* (New York, no date), p. 25; *Water for Old New York* (New York, no date), pp. 4-5; Blake, N. M., *Water for the Cities* (Syracuse, 1956), pp. 14, 46-47, 56-58.

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a water site was dictated by the desire to use only a fraction of the Company's capital for the water works, but the paid-up capital available to the Company in the summer of 1799 was only $400,000; it did not reach $1 million until April 1800 and the authorized $2 million was not collected from stockholders until July 1801. If a water supply from outside the city had been sought, it could have been financed only by an unpopular pressure on stockholders for more rapid payments or by a loan which no private parties would have considered safe to advance. Furthermore, the engineering problems were more complex than was recognized even by the opponents of the Bronx River, and hindsight suggests that the Manhattan Company might have failed to master the technical and financial obstacles to an out-of-the-city water supply in the first years of its life.[6]

No sooner did word get around that the Company would give, at best, a limited water service than the rumors began to fly that a bank and other enterprises would be established with the Company's "surplus" funds.[7] After several weeks of debate, during which the directors passed resolutions asserting the primacy of providing water over all other objects of the Company, the first step toward banking was taken on May 8 when the directors authorized the Company's president to "discount debentures at lawful interest, provided such debentures shall not be payable after 8 August next, and a sum not exceeding $50,000 be so employed."[8] A week later there was a definite commitment to banking with the adoption of the resolution: "that so much of the surplus capital of the company as may be deemed necessary, be employed in discounting paper securities, and that . . . an office of discount and deposit be established."[9]

[6] *New York Journal and Patriotic Register*, May, September 1799; *The American Citizen and General Advertiser*, June 1800, May 1801; Blake, *op. cit.*, p. 62.

[7] Troup to King, April 19, 1799, King Papers, XLVII; Nicholas Low to King, April 15, 1799, *ibid.* Aaron Burr had proposed at a directors' meeting on April 29, 1799 that the committee which was considering the proper use of the Company's capital should consider specifically the fields of marine insurance and foreign commerce. Minutes of the Board of Directors, Manhattan Company, April 29, 1799.

[8] *New York Journal and Patriotic Register*, May 22, 1799. The Company's total paid-up capital at the time was only $100,000.

[9] *Ibid.*

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This decision caused the resignation of one director; William Laight felt that it would be improper for him to be the director of a new bank when he was currently a director of the branch of the United States Bank.[10] The fact that Laight did not resign until after the passage of the resolution to open a bank suggests that there was considerable controversy over the matter within the board of directors, and that Laight remained in office to vote against the bank.

Neither the vote in favor of a bank nor the decision on the water source had been taken when the Manhattan Company placed its stock on public sale on April 22, 1799. But the investing public was aware that the new company would be more than a public utility, as they flocked to the inn on Wall Street where the subscriptions were taken. It was a favorable time to launch a financial institution; New York, more than any other port, was prospering on the substantial reexport and carrying trade arising from the war between England and France. New fortunes were being made and men had uses for commercial credit beyond the supply offered by the two existing banks. The many French names on the Manhattan's subscription list reveal one group which may have met a cool reception from the partisans of England's cause at the Bank of New York and the Branch Bank. Young men on the way up, such as John Jacob Astor with his thick German accent, found a more comfortable atmosphere outside the precincts of aristocratic merchants.[11] But the idea of a new bank and additional credit was equally attractive to many respected customers of the established banks.

As an investment outlet, the stock of a new bank would have great appeal. Since 1791 only three companies had been chartered in New York City; all were insurance companies, attracted by the great risks shippers faced in a war period, and they were closely held corporations.[12] The

10 Henry A. Coster was elected in his place. Scoville, J. (Walter Barrett, pseud.), *The Old Merchants of New York* (New York, 1885), II, 63, 190-94. Laight's action suggests that he was not identified with the Republicans, as Part I of this article indicated; yet he does not appear to have been an active Federalist either.

11 Astor did not buy stock in April 1799, but he was a stockholder when the first dividend was declared in July 1800. First Stock Dividend Book, Manhattan Company, Historical Display, Chase Manhattan Bank.

12 The United Insurance Company had only 40 stockholders, each with an investment of $2,500 in cash and mortgage security for $10,000. Dividends

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stock of financial corporations had proved to be unusually safe, highly profitable, freely transferable, and notably liquid, and protection was afforded to the wealthy man who invested a relatively small sum because corporations enjoyed limited liability.[13] Finally, there was the lure of quick turnover profits for those who bought bank stock at par and sold at the usual 20-40 per cent advance which came soon after a charter was granted; in this case, the Manhattan's charter had been obtained prior to the sale of stock at par, making a much surer speculation. By the time the first dividend was declared by the Manhattan in July 1800, many stockholders of the year before had greatly reduced their holdings or liquidated them, at a good profit, and a considerable number of new names appeared on the roster.[14]

With all these inducements to buy Manhattan stock, it is not surprising that the public demand should have exceeded the available shares. However, the public was not offered all 40,000 shares, at $2.50 as the initial payment per share. More than half of the shares were reserved for the relatively small number of men who had been associated with the Company before its incorporation; when the final reckoning was made, it showed that the favored group—directors, original subscribers, original petitioners and the City of New York—had taken 22,999 shares.[15] The remaining shares were

for 1796-1799 totaled $5,370.85 for each stockholder, providing a return of 50 per cent per year on the cash investment. Nicholas Low to Rufus King, June 14, 1799, King Papers, XXXVII.

[13] There is abundant evidence that the early business corporation in New York was entitled to limited liability without a specific statement in the charter, and that the only references to the subject in charters concerned restrictions on limited liability. Based on research on Massachusetts charters, a contrary conclusion was reached, and it was generalized into a verdict on the early American corporation by Oscar and Mary F. Handlin in their "Origins of the American Business Corporation", *Journal of Economic History*, V, 1-23. Apparently more state studies are required before generalizations can be drawn.

[14] Aaron Burr was offered 26¼ per cent over par for his shares in April 1800. Burr to William Edgar, April 14, 1800, William Edgar Papers, New York Public Library; first Stock Dividend Book, Manhattan Company.

[15] The thirteen directors were entitled to 1,000 shares each and took a total of 12,000 on April 20. *A Collection of Rare Autographs Commemorating the 120th Anniversary of the Bank of the Manhattan Company, 1799-1919* (New York, 1919).

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then offered to the public which heavily oversubscribed the issue on its first day. To Aaron Burr and his committee of John Watts and William Laight fell the duty of devising a scheme to reduce the requested subscriptions; their plan called for a maximum of 26 shares for any one who had no prior rights to shares.[16] Whether those with prior rights as directors, original subscribers or original petitioners might also add another 26 shares to their holdings was not made clear; it was of interest since several names had been entered more than once on the subscription list.

Applying the new rules, the Company discovered that 13,148 shares had been taken by the general public on April 22, almost a precise third of the total shares. There remained some 2,000 shares as a result of the reduction scheme, and these were offered in two stages—first in five-share lots and then in two-share lots, with preference to those who had not previously subscribed; 2,104 such shares were sold. After May 6, the last deadline for first payments, 1,749 shares were unclaimed and were quickly bought up, giving the public a total of 17,001 shares.

How did Federalists react to the new company and its stock subscription? Not, it may be said, by unanimously throwing up their hands in horror and refusing to have anything to do with this Republican-dominated pseudo water company. Indeed, a sizable number of prominent Federalists who had been associated with the Company earlier con-

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The City of New York was entitled by law and did subscribe to 2,000 shares.

The 52 original subscribers (which included 6 of the directors) were each entitled to as many of the 10,665 shares as they had individually subscribed before the charter was granted. They were given until May 6 to make the first payment of $2.50 per share and by that date 8,799 shares were taken by original subscribers.

The 43 original petitioners (which included 5 directors) were entitled to 10 shares each, and 200 shares were so taken. Minutes of the Board of Directors, Manhattan Company, April 15, May 15, 1799.

Total: 22,999 shares.

[16] Those who had asked for 20 shares or less were given the requested number; those wanting 20-27 shares were allowed 20; 28-34 requested, 21 allotted; 34-40 requested, 22 allotted; 40-49 requested, 24 allotted; 50 and over requested, 26 allotted. *New York Journal and Patriotic Register*, April 27, 1799.

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tinued as investors or directors and many others bought stock at the public sale and afterwards. Keen business sense and a conviction that political scruples were out of place when economic opportunities beckoned caused some Federalists to defend themselves before an accusing Federalist bank director, Nicholas Low, who reported that "Some of our Friends support it not because it is right in itself but because it has been granted & then say that if the Legislature have given Birth to a monster it is their Duty to strangle it." [17]

But a far more subtle reasoning was also advanced by some Federalists. Just before the public stock subscription was opened, Low wrote disapprovingly: "some of our wise ones recommend that federal men subscribe & endeavor to get the management into their Hands. . . ." [18] Here was a combination of business and politics difficult to resist! When did this idea first gain currency among Federalists? It would explain much that stands as speculative to discover that Burr's legislative triumph in gaining the incorporation had been achieved by Federalist pressure to pass the charter so that they might seek to control the company.

And who were "the wise ones"? The name of Alexander Hamilton comes quickly to mind; not only was he an intimate of Low's, but he gave evidence of a capacity for such a maneuver in his famous suggestion to Governor John Jay that the Federalist state legislature whose term was expiring be illegally kept over long enough in 1800 to choose the members of the electoral college who would, in turn, choose the president—all in the hope of defeating Thomas Jefferson.[19] As if to taunt the historian, the signature of an "A. Hamilton" is affixed to the subscription lists of the Manhattan Company, but, like a bad musical comedy plot, it proves to be Alexander I. Hamilton, a contemporary New York merchant who, for reasons of his own, often omitted his distinguishing middle initial.[20]

[17] Low to King, June 14, 1799, King Papers, XXXVII.

[18] Low to King, April 15, 1799, King Papers, XXXVII.

[19] The original of this letter, dated May 7, 1800, is in the John Jay Papers, Columbia University.

[20] The Company's listing for the first stock dividend has "Alexander I. Hamilton" and a signature identical with that found in the first subscription list.

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If it cannot now be determined whether Hamilton actually recommended this strategy of penetration of the Manhattan Company, it can be stated with a fair degree of confidence that two people extremely close to Hamilton, and well known to Low, might well have been the source of Low's remark. They were Hamilton's brother-in-law, John B. Church, who remained on as a director and even seemed to be enjoying his position more than was consistent with political duty, if Robert Troup's comment is to be believed —and, surprisingly enough, Robert Troup himself.[21] Troup, through his lengthy and well-preserved letters to Rufus King, remains one of the prime sources on New York State politics in this period and he has been pictured as a rather indignant critic of the Manhattan Company and the Federalists in it.[22] But Troup was a subscriber to Manhattan stock on April 22, having been an original petitioner, and in July 1800 he collected dividends on his 25 shares.[23] Nor was this the last time he was to indulge in such boring from within.

The mingling of politics and profits was not unpleasant to Troup who did not agree with much of the Federalist press on the subject of the Manhattan Company. Soon after the decision to open a bank was announced, Troup declared: "I still believe the company will make its way into full business as a bank & that in time its stock will be the best amongst us." Toward the end of the same year, he wrote: "The stock of the company is on the rise. The company does a great deal of discounting business—and is gaining ground in public esteem."[24]

Of the Federalists who agreed with Troup and invested in the Manhattan Company, none was more eminent than Richard Harison, the Recorder of New York City, who was entitled by law to be a director *ex officio*, but nevertheless subscribed to 1,000 shares personally and then broke the tie in

21 Troup to King, June 5, 1799, King Papers, XLVII. John B. Coles and John Watts, Federalists, also remained in the directorate.

22 Blake, *op. cit.*, p. 54; Schachner, N., *Aaron Burr* (New York, 1937), p. 162.

23 *A Collection of Rare Autographs . . . of the Bank of the Manhattan Company;* First Stock Dividend Book, Manhattan Company.

24 Troup to King, June 5, December 12, 1799, King Papers, XLVII.

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the City Council over the issue of taking up the city's right to buy 2,000 shares of Manhattan stock. Harison and some Federalists on the Council voted for the purchase, while Republicans voted in the negative.[25] Here were 3,000 Federalist shares and votes for as long as the city government remained Federalist.

Councilmen who were Federalists made personal subscriptions as did State Senator Peter C. Schuyler and Daniel Hale, the Federalist Secretary of State. Further names from the April 22 list would include well-known Federalist merchants, such as Cornelius I. Bogert, Pierre DePeyster, Peter Kemble, Gilbert Aspinwall, Dominick Lynch, Charles McEvers, John Townsend, James I. Roosevelt, Philip Brasher, Charles L. Cammann and A. L. Bleecker, many of whom were considered important Federalists. Cammann held on to his stock in spite of being voted a director of the Bank of New York in 1800.

Even more impressive are the new Federalist names which appeared on the stock roster by 1800. It is a problem whether Richard Varick, the Mayor of New York, should come first or whether the honor should go to Stephen Van Rensselaer, the Patroon, Lieutenant-Governor of the state in 1799, and brother-in-law of Hamilton. High places must also be accorded Cadwallader D. Colden, Nicholas Fish, John and Philip Hone, Peter Jay Munro, Garrit Van Horne, William W. Woolsey, John Slidell, Jacob Sherred, Selah Strong, and Isaac Gouverneur, an original subscriber who apparently did not take up his option, but later bought 100 shares, disregarding the conflict of interest with his directorship of the Branch Bank.[26]

Thus the Manhattan Company was by no means exclusively a Republican institution in its first years. Whether from political or economic motives, a substantial minority of the directors and stockholders were Federalists who had an interest in the Company and bore partial responsibility for its actions.

[25] *Minutes of the Common Council of the City of New York, 1783-1831* (New York, 1918), II, 535-36.

[26] First Stock Dividend Book, Manhattan Company.

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II

If the chartering of the Manhattan Company led one group of Federalists to infiltrate it, many more Federalists were moved to oppose strenuously any recognition or contact with the upstart institution. Their tempers were not improved by the knowledge that Federalist votes had given the monster legal life. "The most respectable mercantile & monied interest of the City are decidedly opposed to the measure", wrote Robert Troup, Federalist lawyer, in mid-April 1799, and two months later, he reiterated: "The opposition given to this company by the great body of our monied & mercantile interest is astonishing. Our friend Low would annihilate the charter in an instant if he could and the temper he possesses is common." [27]

Nicholas Low, merchant, land speculator, bank director, insurance company president and financial agent for Rufus King, expressed the views of these Federalist business leaders when he called the Manhattan Company "a greater Pestilence than the Yellow Fever" which might "become a dangerous Engine in the Hands of the Enemies of Government".[28] To Low, who acknowledged his inexpertness in political affairs, the accession of Jefferson to the presidency foretold anarchy; he wrote that he was unwilling to invest King's funds further in United States government obligations for fear of their safety and he proposed that King lend him some part of these funds. King was not only more worldly than Low, but he was also disenchanted with John Adams; he assured Low that Jefferson would not overturn the government and asked Low to continue to buy United States stocks.[29]

[27] Troup to King, April 19, June 5, 1799, King Papers, XLVII.

[28] Low to King, April 15, June 14, 1799, King Papers, XXXVII. So impressed were Low and Robert Troup with the Manhattan charter that each had independently sent a copy to Rufus King in London. King, puzzled at first by the excitement over the charter, quipped: "What is the object of this manhattan company—commercial, political, or religious, tho' on recollection of names it is plain it cannot be the last." King to Troup, May 29, 1799, King Papers, VIII.

[29] Low to King, May 24, October 7, 1800, King Papers, XXXVII. Low's political pretensions amused Gouverneur Morris who wrote of a visit to Low on the day of the state election of 1799: Mr. Low "enters into political Conversation and tries to persuade me that he is a federalist." Gouverneur Morris Papers, Diary, May 1, 1799, Library of Congress.

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In view of Low's general attitudes and his specific connections with the two existing banks in New York City, it is not surprising that he forfeited his opportunity, as an original subscriber, to buy 100 shares of Manhattan Company stock.[30] Other original subscribers with Federalist bank associations who also passed up their chance to buy stock, at no loss of cash but with a certain speculative sacrifice, were Cornelius Ray, Robert Bowne, J. C. Vandenheuvel, William Seton and Frederic DePeyster. Nicholas Gouverneur, the president of the Bank of New York, was another who did not subscribe for the ten shares due an original petitioner.[31]

A far longer list of Federalists, outstanding in business, finance and law, had not subscribed for stock before the charter was obtained and did not subscribe during the first year of the Company's incorporation. Such men were Archibald Gracie, Robert Lenox, William Constable, Josiah Ogden Hoffman, Egbert Benson, Herman Le Roy, John B. Murray, Daniel McCormick, Isaac Sebring, Matthew and David Clarkson. Others who were prominent as well in Federalist politics might be named: Robert Bogardus, David B. Ogden, Wynant Van Zandt, John B. Dash, Robert Cheeseborough, Gabriel Furman, Elisha Tibbits, and John Wells.[32] Undoubtedly, in numbers and wealth, the Federalists who rejected the Manhattan Company greatly exceeded the Federalists who did buy stock.

Whatever divergence of opinion Federalists might express about the wisdom or morality of owning Manhattan stock,

30 Low to King, April 17, 1799, King Papers, XXXVII.

31 List of original subscribers and petitioners. Minutes of the Board of Directors, Manhattan Company, April 15, 1799. List of subscribers on April 22, 1799. *A Collection of Rare Autographs . . . of the Bank of the Manhattan Company.* List of stockholders as of July 1800. First Stock Dividend Book, Manhattan Company.

32 Fox, D. R., *The Decline of Aristocracy in the Politics of New York* (New York, 1919), pp. 17-21. Fox is not an infallible guide to the politics of "the few, the rich and the well-born." Henry Remsen, whose occupation, family background, and business associations suggest federalism, was in fact the Republican cashier and then the president of the Manhattan Company. Fox was led astray by his fixed criteria and by the misinformation that Remsen had been John Jay's secretary when he had in fact been Thomas Jefferson's. *Ibid.*, pp. 21, 156, 157. During this period the Republican party in New York City attracted a growing number of men whose economic interests and background might indicate loyalty to the Federalists.

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they could unite wholeheartedly in an election campaign to defeat the Republicans and destroy the political future of the man who had created the corporate octopus. The Federalist effort for the state elections of 1799 had appeared dull and uninspired to John Jay's son, just a few weeks before election day, when the Manhattan charter had not yet been voted: " I fear that very feeble Efforts will be made here & in WChester by our Friends at the approaching Election. The attention of the Merchants is greatly engrossed by several Failures which have already happened & more which are expected to take Place." [33] Shortly, the younger Jay reported the dissolution of Federalist apathy " by a full Knowledge of the Manhattan Scheme & by some well written Publications which appeared in the Papers." [34]

Since the Manhattan Company had not yet announced any definite policies, it was necessary for the Federalist campaign to rely on rumors and information from the Federalist directors of the Company. One of them, John B. Coles, was in fact the Federalist candidate for state senator, running unashamedly in a campaign largely devoted to attacking the corporation with which he had been and continued to be associated for some years. Not until Coles had been safely elected did a Federalist newspaper print a letter which expressed dissatisfaction " to find the name of John B. Coles still lent to support such an institution." [35] Coles had been protected during the campaign by the prevailing custom that candidates should not speak in their own behalf.[36]

The Federalist campaign made light also of the part that members of their own party had played in forming the Company, voting its charter, and subscribing to its stock. Rather,

[33] Peter A. Jay to John Jay, March 28, 1799, John Jay Papers.

[34] P. A. Jay to John Jay, May 3, 1799, Jay Papers.

[35] *New York Commercial Advertiser*, May 25, 1799, " Julius ". In fairness to Coles, it should be noted that he remained the most vigorous exponent of an expanded water supply within the Manhattan's board of directors. Minutes of the Board of Directors, Manhattan Company, June 24, 1799, August 13, 1799, December 30, 1799, February 3, 1803.

[36] It was in the state election which presaged the Revolution of 1800 that this custom was first breached in New York. Peter A. Jay wrote with distaste that the Republican, Brockholst Livingston, " made Speeches to the Mob tho' he was himself a Candidate." P. A. Jay to John Jay, May 3, 1800, John Jay Papers.

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the attention of Republican voters, to whom the election propaganda was chiefly addressed, was riveted on the single-handed treachery of Aaron Burr, now heading a slate of Republican assemblymen seeking election from New York City. Appealing to the deeply rooted anti-bank, anti-corporation views of Republican voters, the Federalist arguments made them uneasy about Burr's Republicanism, as they occasionally had been in the past. It was implied that the Republicans had abandoned their traditional animosity toward banks.[37] Much was made of the deceitful manner in which the charter was obtained, the likelihood that the water supply would be indefinitely postponed, and the charge that "some capitalists are sporting with *Scrip*, and a bankrupt politician repairing his fortunes by 'monied transactions'".[38] The supposed profitability of a private water company gave renewed popularity to the discarded idea of municipal water works which now seemed financially feasible and publicly desirable when set beside the limited water plans of the Manhattan Company.[39]

While the Manhattan Company and Burr were not the only issues in the election, Federalists attributed their smashing defeat of the whole Republican local slate largely to their exploitation of that subject.[40] This was the last election the Federalists were to win in New York City for some years and it was also the last in which the Republicans were

[37] Alexander Hamilton did not accept this argument. In 1801, writing to discourage Federalists from considering Burr as a presidential candidate, he declared: "I have been present when he has contended against banking systems with earnestness, and with the same arguments that Jefferson would use." Hamilton to J. A. Bayard, January 16, 1801, Hamilton Papers, Library of Congress.

[38] *New York Commercial Advertiser*, April 26, 1799, "C". Newspaper articles against Burr and the Manhattan Company were concentrated in the last week before the election and appeared, sometimes as repeats, in the *Spectator* and the *New York Gazette and General Advertiser* as well as the *New York Commercial Advertiser*.

[39] *The Spectator*, May 1, 1799; *New York Commercial Advertiser*, May 1, 1799. However, the Philadelphia municipal water works experienced great financial difficulty and had a deficit of over $500,000 by 1815. Blake, *op. cit.*, pp. 27-40.

[40] P. A. Jay to John Jay, May 3, 1799, Jay Papers; Troup to King, May 6, 1799, June 5, 1799, King Papers, XLVII. For Republican concurrence: M. L. Davis to Albert Gallatin, March 29, 1800, Gallatin Papers, New York Historical Society.

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without bank facilities of their own; if Burr had any lingering doubts about the necessity of a new bank, the reports that the Federalist banks had refused discounts to possible Republicans on "unexceptionable commercial paper" during the 1799 election would have removed all uncertainties.[41]

The temporary exclusion of Burr from political office was small comfort to the most bitter opponents of the Manhattan Company—men, like Nicholas Low, whose connections with the existing banks gave them a direct financial interest in thwarting competition from a new bank. As the various announcements came from the Manhattan Company of its plans for a limited water supply and a bank, angry and cajoling letters appeared in the Federalist press. The legality and morality of a bank were scornfully questioned. "Socrates", who wrote open letters to Chancellor Livingston and Aaron Burr, asked the latter: "Can you as a lawyer say that this company does not run the risk of forfeiting its incorporation by establishing a bank at this time?"[42] Another correspondent declared:

> I am willing to believe that the legislature was not aware that a bank could or would be created under that charter, because I think it would have been deemed worthy of a very mature consideration whether a rival should be encouraged, by the state of New York, against the bank of New York, an institution from which the state has derived so much accommodation in its fiscal arrangements.[43]

To discourage thoughts of a bank, much was made of the Manhattan Company's obligation to use all of its capital for a water supply, of the exclusive access to the waters of the Bronx River possessed by the Company, of the Republican departure from all accepted principles governing corporations. "Socrates", in unfederalist vein, asked: "Are not all Corporations unwieldy machines, with difficulty made amenable to the laws? . . . Is it not on that account that the power of making them is very sparingly exercised by wise legislatures?"[44] Scattered through most of the caustic comments

[41] *New York Journal and Patriotic Register*, May 1, 1799.

[42] *New York Commercial Advertiser*, May 16, 22, 23, 1799.

[43] *Ibid.*, June 8, 1799, "A Merchant".

[44] *Ibid.*, May 22, 1799, "Socrates".

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were hints that the next legislative session would see a revocation of the charter if the Manhattan Company did not use its capital for a water supply.

Undeterred by these warnings, the Manhattan Company bank opened in September 1799. A comparison of the powers of and restrictions on the Bank of New York with those of its upstart rival revealed an uncomfortable superiority of position for the newcomer.[45] Where the Bank of New York's charter set its total capital and property at $1 million, the Manhattan Company might have a paid-up capital of $2 million plus an unlimited amount of property of unrestricted type.[46] Where the charter of the Bank of New York would expire in twenty years, that of the Manhattan Company was perpetual.[47] Where the Bank of New York was forbidden to contract debts or emit notes payable in the bills of credit issued before 1789 by the state, no such limitation applied to the Manhattan Company. Where the Bank of New York was required by law to retire a certain number of directors each year, report to its stockholders at intervals, and apportion its stockholders' votes in a specified manner, the internal affairs of the Manhattan Company were left to its directors and stockholders.[48]

Where the debts of the Bank of New York were limited to an amount not in excess of three times the subscribed

[45] *New York Laws*, ch. 37, 1791; ch. 84, 1799.

[46] The Manhattan Company became the owner of large amounts of city real estate. *Background for Tomorrow*, p. 21; De Witt Clinton to Henry Remsen, March 28, 1808, Clinton Papers, New York Public Library.

[47] Its unlimited life enabled the Manhattan Company to decline to join the New York Safety Fund System in 1829, while other banks whose charters were expiring had to join if they wished a renewal of charters. When two agents of the Safety Fund later appealed to the Manhattan Bank for temporary financial support in a moment of crisis, the Bank's cashier, Robert White, was said to have refused them, offering instead "a glass of good Manhattan water". This was rejected on the ground that it would cause the Fund to collapse completely. Scoville (Walter Barrett, pseud.), *The Old Merchants of New York*, V, 157-59.

[48] A politically inspired investigation of the Manhattan Bank in 1840 disclosed that the Bank's directors were inactive and did not attend meetings. Loans were virtually under the sole control of the cashier. 26 U.S. Congress, 2 session, *House Doc.* 111, pp. 108-9. Myers, G., *The History of Tammany Hall* (New York, 1917), pp. 126-27.

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capital stock, with the directors individually responsible for excess debt, the Manhattan Company was untroubled by any debt limitation or responsibility of its directors.[49] Where the Bank of New York could not carry on its business outside the city, the Manhattan Company was free to do so.[50] Where the Bank of New York was directly forbidden to "deal or trade in buying or selling any goods, wares, merchandise, or commodities whatsoever, or . . . any stock", the Manhattan Company had complete freedom in these fields.[51] Finally, where the Bank of New York could undertake no other business save banking, the Manhattan Company could launch into other fields with impunity.[52] Is it any wonder

[49] The Manhattan Bank was not conspicuously reckless in this regard, and, compared with later banks, was fairly conservative. Sigourney, C. (A Citizen), *An Appeal to the Public in the Conduct of Banks in the City of New York* (New York, 1815), p. 6.

[50] In 1809, the Manhattan Bank established branches in Poughkeepsie and Utica. A bill to restrain these branches which, according to De Witt Clinton, "excited the jealousy of other Banks and the peculiar malignity of federalism", passed the Assembly but was lost in the Senate "after a very long, violent and personal debate." The branches were closed in 1819, presumably because of the post-war depression. Clinton to Henry Remsen, February 10, 12, 20, 24, March 15, 20, 28, 1810, Clinton Papers, New York Public Library; *Background for Tomorrow,* p. 17; Williamson, H. F., ed., *The Growth of the American Economy* (New York, 1951), pp. 317-18.

[51] The Company never attempted to deal in commodities, or to monopolize the flour market, as had been predicted by Federalist newspapers. However, the ability to purchase government stocks without special enabling legislation was a distinct advantage enjoyed and utilized by the Manhattan Company. Other stocks also could be purchased.

[52] This privilege was discussed more than it was used. For months the Manhattan Company advertised its life insurance plan, including a coupon for applicants and lengthy actuarial tables. *The American Citizen and General Advertiser,* March-June 1800. A publication of the Manhattan Company states, however, that no life insurance was sold and that fire and marine insurance and foreign commerce were considered but rejected. *Background for Tomorrow,* p. 11.

Although the Manhattan Company never actually entered any business other than banking and real estate, the potential of its charter continues to attract attention. A financial service reported in 1956 that "Chase-Manhattan Bank could . . . acquire insurance companies, savings and loan associations, real estate companies, and even industrial concerns. Chase-Manhattan is already to a certain degree a real estate holding company. . . . This is a fabulous charter. . . . This is principally what makes the shares attractive . . . in relation to other leading bank situations." Coburn & Middlebrook, "The Chase-Manhattan Bank: A Unique Charter" (Hartford, October 2, 1956, mimeo.).

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that Alexander Hamilton should have written of the Manhattan Company with grudging admiration: "A perfect monster in its principles, but a very convenient instrument of profit and influence." [53]

The first months of the Manhattan Bank's existence confirmed the worst expectations of the established banks whose stock declined in value while that of the Manhattan rose.[54] So ineffective had been the Bank of New York's punitive decision in August 1799 not to accept any Manhattan notes that the action was rescinded in mid-April 1800.[55] Clearly, an appeal to the legislature against the charter of the Manhattan Company was the last hope; the grounds had been cited often enough in the Federalist newspapers. What a surprise, then, to find the directors of the Bank of New York, voting to petition the legislature, not to abrogate the charter of the Manhattan Company, but rather to repeal those sections of their own charter which left the Bank of New York in an inferior position to that of the Manhattan Company! [56] The Bank of New York asked for the revocation of its limited life, restricted property holding, and lack of freedom to deal in merchandise and stocks. Thus the Federalists of high principle who had refused to buy Manhattan stock, and who had looked down upon those Federalists who schemed to gain control of the Company with hopes of using its vast powers to advance their party and themselves, now placed themselves in precisely the same moral position as their brethren.

[53] Hamilton to J. A. Bayard, January 16, 1801, Hamilton Papers. Hamilton was in Burr's class as a corporation lawyer. He devised a legal form for the Merchants' Bank in 1803, before it won incorporation. This conferred limited liability on the bank's stockholders. Republicans questioned its legality, just as Federalists challenged the Manhattan Company. Politicus (James Cheetham), *An Impartial Enquiry into Certain Parts of the Conduct of Governor Lewis . . . Particularly in Relation to the Merchants' Bank* (New York, 1806), p. 12.

The advantages of the Manhattan Company's charter have caused all of its mergers over a century and a half to be consummated by the absorption of other banks into the Manhattan Company, which retains its charter.

[54] P. A. Jay to John Jay, March 17, 1800, Jay Papers.

[55] Domett, H. W., *A History of the Bank of New York* (New York, 1884), p. 57.

[56] *Assembly Journal*, 1800, p. 108.

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The Assembly committee to which the Bank of New York's petition was referred noted that the state felt a deep interest in the welfare and prosperity of the Bank, particularly since the state owned bank stock and the Bank owed the state a large sum. But William Woolsey, the Federalist chairman of the Assembly committee and lately an investor in 150 shares of Manhattan Company stock, reported that his committee entertained

> so high a sense of the impropriety of an incorporated company without checks or restrictions, with an unlimited capital and unrestrained application of it, and of the abuses and evils incident to it, and the dangers resulting from it to the community, that they cannot advise the House to correct a great existing evil by creating a new one. . . .[57]

Although the committee recommended some relief for the Bank of New York, no legislation emerged in that session.

A more direct assault was next employed by the Bank of Albany which feared that a Manhattan branch might be established in its vicinity. Its petition prayed that the Manhattan Company be restrained from the exercise of powers granted it by incorporation. Again a sympathetic committee reported, noting the doubts whether the Manhattan charter conferred " rights of this dangerous tendency " and suggesting the passage of " a law declaratory of the extent of the rights vested in . . . the manhattan company, and restrictive of their exercise in such way as to prevent any injury to incorporations of a similar nature, or to the public." [58]

Shortly before the report of the Bank of Albany's petition was delivered to the Assembly on March 28, 1800, a member received permission to bring in a bill " to explain and amend an act for supplying the city of New York with pure and

[57] *Assembly Journal*, 1800, p. 211. In 1801 the directors of the Bank of New York submitted another petition to the legislature which repeated the requests for changes in their charter. While the legislature did not improve the position of the Bank of New York with regard to perpetual life, unlimited property ownership, and dealership in the stock of the United States or individual states, it did grant the petition in so far as the rotation of directors was concerned; henceforth the Bank of New York could reëlect its directors without limitation. The privilege of paying the Bank's debt to the state in bills of credit of the state which were in the Bank's possession was also granted. *New York Laws*, ch. 104, 1801; Domett, *op. cit.*, pp. 58-59.

[58] *Assembly Journal*, 1800, pp. 232, 238.

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wholesome water." [59] This was the answer of the Manhattan Company to the attacks against it, and, unlike the Republican newspaper which blasted the Company's enemies, the Company tried to placate them.[60] The board of directors of the Manhattan Company met on March 10 and at Aaron Burr's suggestion resolved to make an application to the legislature for a modification of their charter.[61] The Company would agree to confine its powers to the objects of water, banking, buying and selling annuities, stock and bills of exchange, and insurance. The charter might be amended to declare its stock to be personal estate, and to prevent the Company from issuing notes in excess of three times its capital. Real estate was to be held by mortgage or in payment of debts previously contracted. Finally, the Company would consider changing its by-laws so that the election of directors would not be confined to one day.[62]

But there was no need for the Manhattan Company to make even these concessions. Its bill was committed to the Committee of the Whole House after a second reading, and shortly thereafter the report on the petition of the Bank of Albany was similarly committed; nothing further was heard of either during the remainder of the legislative session.[63]

These abortive attempts to curb the Manhattan Company's powers were not the last time such efforts were to be made, but later attacks were unleashed against an established, respected bank with which even exalted Federalists did business. Alexander Hamilton maintained an account with the Company and obtained accommodation loans.[64] Such men of wealth and property as Gouverneur Morris obtained loans from the Bank and John Jay became the owner of some shares sometime before November 1802.[65]

[59] *Ibid.*, p. 237.

[60] *The American Citizen and General Advertiser*, April 28, 29, 1800.

[61] Minutes of the Board of Directors, Manhattan Company, March 10, 1810.

[62] *Ibid.*

[63] *Assembly Journal*, 1800, p. 240.

[64] Ledger Book, Historical Collection at Chase Manhattan Bank; Minutes of the Board of Directors, Manhattan Company, July 23, 1804.

[65] Diary of Gouverneur Morris, June 22, 1801, Library of Congress; P. A. Jay to John Jay, November 26, 1802, Jay Papers.

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III

Within the Manhattan Company, now smoothly in operation as a bank, a prolonged struggle for control began in 1801, a replica of the battle on the larger stage of state and city politics. As the schism in the Republican ranks widened, the Burr group gravitated toward the Federalists, while the Clinton-Livingston faction called all of its opponents "Federalists". The Manhattan Company, as the political world in microcosm, had a hotly contested election of directors in 1801, with four different slates offered by groups of stockholders.[66] One target of three of the slates was Aaron Burr, the Vice-President of the United States, of whom one group of stockholders wrote, tongue in cheek, that to continue his directorship "would not add a single feather to his cap or a tittle to his dignity, covered with laurels and honors of various kinds. It is not to be presumed that he is anxious to retain what to him would be a cypher. . . ."[67]

But Burr was most anxious to remain a director, if for no other reason than to use his position to relieve his acute financial embarassment. During 1802, his last year on the board of directors, Burr borrowed very heavily from the Company, on the signature of friends, and it was his exhaustion of the financial usefulness of the Manhattan Bank as much as the political animosity of the rising Clintonians which caused him to start up a rival bank in the fall of 1802 with John Swartwout as its organizer.[68] Burr did not stand

[66] *The American Citizen and General Advertiser*, November 30, December 1, 1801. An attempt was made in the Common Council of New York City to have the Republican Mayor, Edward Livingston, vote the city's 2,000 shares, but the Council chose the Federalist, Philip Brasher, as the vote-caster. *Minutes of the Common Council*, III, 62. Burr's close friend, Matthew L. Davis, regarded John Broome's defeat in this election as a Federalist victory. Davis to Gallatin, December 22, 1801, Gallatin Papers.

[67] *The American Citizen and General Advertiser*, December 1, 1801.

[68] Some Republicans took Swartwout's bank to be an additional party bank and subscribed to it. Governor George Clinton to De Witt Clinton, February 16, 1803, John Broome to De Witt Clinton, February 24, 1803, Clinton Papers, Columbia University. But Robert Troup saw the new bank as the concrete evidence of the feud among Republicans "which I am malicious enough to encourage with my subscription." Troup to King, August 24, 1802, King Papers. When Swartwout's bank proposals failed in Albany, the Burrites joined a group of Federalists, including Troup and others who had been in the Manhattan, to form the Merchants' Bank, provoking a bitter battle between the two banks.

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for election as a Manhattan director in December 1802 when John Jay's son wrote to his father: "An attempt will be made to turn out several of the Directors of the Manhattan Company at the ensuing Election. Mr. Church's son begged me to request you to send to someone in town your proxy." [69]

Although the three Federalist directors survived the 1802 election, their days were numbered. John Watts was dropped in 1803, while De Witt Clinton took his place on the board of directors; the next year's election displaced John B. Church and John B. Coles, and gave the Clintonians, now also in control of the city government, a commanding majority of the Manhattan. For the first time, the Bank became a wholly Republican instrument, which was used not only against Federalists, but against dissident Republicans, even when they were Manhattan stockholders.[70] But the persistent factionalism which characterized the Republican party worked against De Witt Clinton also, and in 1813 he withdrew from the directorate as he formed an alliance with segments of the surviving Federalists.[71] Thereafter, even when much of its stock passed into the hands of foreigners, the Manhattan Company was associated with Tammany Hall in the city and with the Albany Regency in the state.[72]

When the Clinton faction came into power in the Manhattan Company a fresh approach was taken toward the weaknesses in the Company's legal position. The right to operate as a bank derived entirely from the Company's water-supply activities and was a residual privilege to be exercised only so long as the Company maintained a satisfactory water service. Knowing how vulnerable the Company was on the last score, unwilling to commit further funds to a field which could use up all of the bank capital, and bearing responsibility for the welfare of the city as its mayor, De Witt Clinton, wearing also his other hats as director of the Manhattan and a state senator, proudly secured the passage in 1808 of an act which he believed would make the Manhattan

[69] P. A. Jay to John Jay, November 26, 1802, Jay Papers.

[70] *New York Evening Post*, April 9, 1803.

[71] Clinton to Henry Remsen, November 22, 1813, Clinton Papers, Columbia University; Fox, *op. cit.*, pp. 164-75, 188-91, 194-201.

[72] Myers, *op. cit.*, pp. 126-27. These groups came as close as possible to the designation "regular Republican" (later Democratic).

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Company unassailable as a bank.[73] The legal authority to sell the water works to the city and continue in operation as a bank for thirty years was the heart of the law which also gave the Company's banknotes the same status as those of other banks and added a touch of legitimacy by permitting the state to buy shares in the bank as it had in all chartered banks thus far. An additional ten-year period was granted to bring in an adequate water supply.

The failure of the Company to sell its water works left it open to attack. De Witt Clinton, as Governor of the state in 1820 and 1825, undermined the position of the Company, in which he no longer had either political or financial interests, by reflecting upon the poor quality of New York City's water supply.[74] In 1829 Edmond Genet, the "Citizen" Genet of an earlier day, initiated a legal challenge to the Manhattan Company and his attack was reinforced by that of New York City Alderman, Samuel Stevens.[75] The issue was political as well as legal, and the court decision in favor of the Manhattan was not surprising; a few years later the Company weathered the reopening of the court decision of 1832.[76] A federal investigation in 1840, with damaging revelations, lessened the Company's chances to sell its water works to the city which was about to open the Croton Aqueduct, but it did not permanently injure the Bank.[77] Yet the nagging fear remained that the Bank was indissolubly joined to the water works, and, though the Manhattan Company's wells were not in use after 1840, the Company retained title to its water property and leased it "on condition that a steam engine be kept in readiness to pump water." The water committee which had been chosen annually as the first item of company business, following the tradition established in Burr's time, was not discontinued until 1923.[78]

[73] *New York Laws*, ch. 88, 1808; Clinton to Remsen, March 16, 18, 21, 28, 1808, Clinton Papers, New York Public Library; Clinton to Remsen, March 25, 1808, Chase Manhattan Historical Display.

[74] Speeches to the Legislature, January 4, 1820, January 4, 1825.

[75] *Legislative Document* 336, 1830, IV; *Senate Journal*, 1830, pp. 198, 378; *Minutes of the Common Council*, XVIII, 604, XIX, 459-60, 497-98, 519-22; *New York Evening Post*, June 17, 1830.

[76] 9 *Wendell Reports* 351-94; *Assembly Document* 308, 1836, IV.

[77] 26th United States Congress, 2 session, *House Document* 111.

[78] *Background for Tomorrow*, p. 25.

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In retrospect, it may be said that the influence of the Manhattan Company and its unusual charter on early New York economic and political life was felt in many ways:

As a deterrent to municipal water works. The perpetual charter and presumably exclusive right to the very sources of water which the city might wish to tap blocked municipal enterprise until the tide of public sentiment turned against monopoly privileges and rejected the idea that exclusive rights could be claimed without an express grant. The inadequate water supply endured by New York City for so long was one of the most serious consequences of the failure of successive generations of Manhattan directors either to expand their water service to meet the growth of the city or to dispose of their water rights and property.

As a political force. "Federalism", wrote one Republican, "retained its dominion until the establishment of the Manhattan Company; after that event its empire became dissolved." [79] De Witt Clinton, during his days as a director, declared: "the cause of republicanism . . . is intimately connected with the prosperity of our institution." [80] The Manhattan Company introduced the explicitly political bank in which ordinary business considerations were sometimes subordinated to political needs, and the politics of stockholders, directors, and loan seekers was more important than their commerical standing. Whether the election of 1800 might have been won without the Manhattan Bank is debatable, but several participants acknowledged its help and some traced Jefferson's presidency to its aid.[81] De Witt Clinton was said to have consumed most of his wife's fortune in endorsing the notes of "republican young men" without capital whose high rate of failures, "misconduct and downright knavery" placed Clinton in financial difficulties for the rest of his life and turned his debtors into political enemies.[82] More than

[79] Politicus (James Cheetham), *op. cit.*, p. 9.

[80] Clinton to Henry Remsen, March 16, 1808, Clinton Papers, New York Public Library.

[81] M. L. Davis to Gallatin, March 29, 1800, Gallatin Papers; Myers, *op. cit.*, pp. 13-15; *The American Citizen and General Advertiser*, April 28, 29, 1800; *New York Evening Post*, March 22, 1804.

[82] Hammond, J. D., *The History of Political Parties in the State of New York* (Buffalo, 1850), I, 199-200.

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most banks in the state, the Manhattan was committed to political involvement.

As a vested interest deserving the favor and protection of government. If banks could aid in elections, why should government officials not direct government funds, which ordinarily were deposited in banks, to those banks which had helped the party in power? Thomas Jefferson accepted the principle, and the state and city of New York practiced it to the benefit of the Manhattan Bank and other Republican banks.[83] These banks, in turn, made loans to government, but so did unfavored banks, as a condition of being chartered or re-chartered. As a mark of special favor, the state never has sold the 1,000 shares of Manhattan stock, purchased in 1809, although all other bank stock held by the state was sold off a century ago, in keeping with the prevailing belief that government should not own shares in private enterprise.

A far more serious use of government authority to protect the business and political position of the established banks arose in connection with the chartering of new banks and the imposition of restraints on the common-law right of banking. The Manhattan Company initiated both the idea that unchartered companies should not be permitted to conduct banking and the concept that charters should be granted by the legislature only to banks whose politics passed muster; both weapons were used in a vain attempt to exclude the Merchants' Bank from New York financial life, but the principle survived. An era ensued of corruption and scandal in the voting of bank charters, marked by bribery of legislators and competitive offers to the state of subscription rights, loans, and outright cash payments. Realistically describing the functions of a bank charter as a political instrument, Samuel Osgood wrote in 1812 of a bank proposal which did not face political opposition: [84] " this is the precise time to attempt a reconciliation by incorporating a bank that will

[83] Jefferson to Gallatin, July 1803, cited in Hammond, B., *Banks and Politics from the Revolution to the Civil War* (Princeton, 1957), pp. 146-47; *Background for Tomorrow*, pp. 18-19; Anonymous to Clinton, June 23, 1806, Clinton Papers, Columbia University.

[84] Osgood to Anonymous (De Witt Clinton ?), February 22, 1812, Osgood Papers, New York Historical Society. See also Clinton to Remsen, 1809-12, Clinton Papers, New York Public Library.

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embrace the discordant republican interest . . . they would choose six directors and our party might choose six."

Such standards for establishing new banks were unresponsive to the economic and geographical needs for banking services and forced bank organizers into political activities and associations. Faced with the difficult and expensive entry into the world of chartered banking, insurance companies and others evaded the legal monopoly and offered banking services to the public, often at a high cost. At length, the restrictive system, which was encouraged by the fact that so many legislators were also bank directors or stockholders, was brought to an end by the passage of the Free Banking Act of 1838. Perhaps New York had avoided some of the worst aspects of wild-cat banking, but the political control of banking, introduced by the Manhattan Company, had imposed costs of its own.

As a trend-setter in business incorporations. In its first impact the Manhattan Company charter discredited corporations for business purposes.[85] Certainly no legislature would ever agree to anything like a "surplus capital" clause or grant perpetual life where financial powers were involved. Yet after the War of 1812 insurance companies were using vague or implied powers in their charters to conduct banking operations, and court cases turned on issues similar to that involved in the Manhattan charter. Furthermore, the basic principle of the Manhattan Company—the combination of banking with another function—crept into other charters in the form of a specific banking privilege granted to companies whose primary purpose the state wished to encourage. Canals were sometimes given the banking right in lieu of state loans or stock investments, but the proportion of the capital to be devoted to banking was strictly limited to avoid a repetition of the Manhattan Company case. At least one such banking privilege, that awarded the New York Manufacturing Company, was transformed into a full-fledged bank, the Phoenix, in 1814, and manufacturing ceased entirely. Other banks, in existence today, owe their origin to the same

[85] A Federalist newspaper was rebuked in 1799 for reprinting an article from another paper which praised corporations as a means of making canals and turnpikes. *New York Commercial Advertiser*, May 13, 1799, "The American".

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banking privilege idea which Burr concocted in 1799 in crude form.

As an innovator in banking. The pressures to relax the strict commercial standards of banking were to be felt throughout the United States, but the Manhattan Bank, under the impetus of political needs, moved in that direction with greater speed than other city banks. While a portion of the Bank's business was with merchants, many appeals for bank credit from artisans, tradesmen, manufacturers, inventors, land speculators, and advocates of internal improvements were honored because of the political significance of the individuals making the request. Thus the Manhattan was more responsive than the other two city banks to the credit needs of the groups undertaking the economic development of the interior of the state; that such people should be gravitating toward the Republicans rather than the Federalists might have been expected even without the attractions of a bank, but the Bank's willingness to extend credit in new directions may have hastened the political conversion of some.

The terms on which loans and discounts were made by the Manhattan were more liberal than those of the commercial city banks. A longer time period was sometimes allowed, renewals of loans were apt to be more frequent, discounts could be made on the security of the Bank's own stock, and accommodation notes (loans) were based simply on the signature of two reputable persons.[86]

In its internal organization the Manhattan Bank also resembled the later inflationary banks which were not groups of men "clubbing their funds" but rather a credit-hungry, capital-poor body of stockholders. The Manhattan aided its stockholders by setting a low par value for each share, by providing a long period for the payment on shares, and by accepting its own stock as security for the payment of half the total price of each share. All of these measures were new to New York banking, but they were soon widely imitated.

BEATRICE G. REUBENS

BARNARD COLLEGE

[86] John Stevens to Robert R. Livingston, August 28, 1799, Livingston Papers; *New York Evening Post*, June 30, 1803; *Background for Tomorrow*, p. 15.

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REVIEWS

The Democratic and the Authoritarian State: Essays in Political and Legal Theory. By FRANZ NEUMANN. Edited with a Preface by Herbert Marcuse. Glencoe, Ill., The Free Press and The Falcon's Wing Press, 1957.—x, 303 pp. $6.00.

This is a collection of the principal papers written by Franz Neumann during the last fifteen years of his life. The work of selecting and arranging them for publication was begun by the author before his death, and was brought to completion by Professor Marcuse, who has also contributed a biographical preface and a selected chronological bibliography. Since the original lectures and articles were written for a number of different audiences and occasions, it is inevitable that the resulting book should be rather uneven. Some of the pieces are brief, almost perfunctory, while others are fully developed; repetitions and overlappings abound. But in spite of such defects, which are unavoidable in a collection of this kind, the publication of this volume is a welcome event. Professor Neumann was for many years one of the most respected and influential of American political theorists. Although the pressure of other obligations, including a heavy teaching schedule, prevented him from undertaking any later study comparable in scale and importance to the *Behemoth,* his occasional papers gave welcome indications of his continuing development as a legal and political philosopher. Now that this development has been so tragically cut short, the papers themselves, as here collected, gain added interest as the nearest thing we shall ever have to a final statement of his philosophical position.

The conflict between law and sovereignty is the central theme of Neumann's political thought. This sets him apart from the general run of contemporary American theorists, and reflects his own special background. By training and early experience he was both a lawyer and a social democrat. As a lawyer he was deeply aware of the importance of law as a technique of social action indispensable to the maintenance of predictable, rationally calculable relationships among men. As a social democrat, on the other hand, he was extremely sensitive to the political and social realities which underlie the law, and thus to the problem of sovereignty. Much influenced by the Marxist conception of the state as superstructure, he identified sovereignty with the will of socially and politically preponderant forces within the com-

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munity, and believed that this will, though frequently finding it convenient to hide behind a mask of legality, would always refuse in the last resort to allow its specific determinations to be bound by general rules. Crisis situations, in which the sovereign is forced openly to break through the bonds of legality in defense of its power position, were always regarded by him as events of decisive significance, since they, though intermittent, throw a flash of lightning clarity on the basic and continuing structure of political power. But law, though continually threatened by sovereignty, is in itself intrinsically valuable, since it represents, however feebly, the rational as against the merely arbitrary. For Neumann, therefore, the essential problem of political theory is to understand the mutual relationships and, if possible, to reconcile the competing claims of law and sovereignty.

It is not without significance that, in the present volume, the longest and most fully developed essay is devoted to Montesquieu, whose *Spirit of the Laws* was a pioneering attempt to investigate the connection between laws and the underlying social realities. Although Neumann finds his predecessor's conclusions less than impressive, he gives him full credit for having thus recognized the true nature of the problem of politics. His own work is an attempt to advance in the same direction.

The outlines of his solution are to be found in the present volume, and more particularly in "The Concept of Political Freedom", which is much the most important of the papers here collected. Neumann reveals himself throughout as a radical democrat of the rationalist and humanist persuasion. In his opinion, the way to resolve the conflict between law and sovereignty is not to engage in futile and deceptive attempts to limit sovereignty by law, but rather to establish social conditions which will tend to insure that the will of the sovereign conforms with the rational requirements of law. The minimization of social and political monopolies which exacerbate the drive to lawless power, the encouragement of effectively balanced political parties, the reduction of anxiety and alienation by the increase of scientific knowledge and by the political education of the masses —such to his way of thinking are the possible and desirable lines of development for contemporary politics.

None of the basic ideas thus suggested are wholly unfamiliar, nor are they here elucidated in any great detail. Clearly this is but the fragment of what should have been a major work to come. But they are fragments from the hand of a master workman.

FREDERICK M. WATKINS

YALE UNIVERSITY

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The Future of Socialism. By C. A. R. CROSLAND. New York, The Macmillan Company, 1957.—540 pp. $7.00.

This book represents the first extensive, concrete, and largely successful answer to the frequently heard demand for the "rethinking" of the socialist position. Its title is somewhat misleading, for, as the author points out (p. 12), he is concerned exclusively with the future of socialism in Britain. In the British Labor party Mr. Crosland (an economist by training) is identified with the Right wing and it is easy to see why his ideas should be unpalatable to the party militants. He is resolutely anti-utopian, envisaging the development toward a socialist Britain mainly as an extension of achievements already obtained. He is an almost old-fashioned libertarian individualist, extolling the "unsocialist" virtues of private life and cultivating one's own garden, deeply suspicious of all collectivist values. He has little patience with the instinctive identification of socialism with Puritan self-denial and self-discipline. Thus, while carrying on the tradition of the early Fabians in his sober attention to social and economic facts and in his insistence on gradualism and democratic processes, he decisively rejects their elitist "Samurai" notions, prefering "frivolity" to their paternalism (p. 524).

Wherein then does Mr. Crosland's socialism (and the value of his analysis) consist? If his argument were entirely negative, proving the irrelevance of traditional socialist goals and methods to contemporary British society, he would be neither original nor relevant to his proposed task. He is a socialist because he views equality and social welfare as the highest priority goals of governmental policy and because he treats economic arrangements (including private property rights) merely as instruments to the achievement of these goals. And the bulk of his book is taken up with a fearlessly and cogently argued examination of concrete measures likely to realize the stated objectives. He insists that economic efficiency, directed to a fairly rapid growth of the total national product, is the guarantor and prerequisite for the twin goals of welfare and equality and must therefore be a primary concern of socialists. He argues—and here we find another reason for his unpopularity with the Left—that neither total ownership of the means of production nor extensive or detailed planning is a necessary or desirable instrument for achieving equality. Thus, while Mr. Crosland is confident that the increase in productivity will, before the end of the century, have rendered the traditional preoccupation with "optimum allocation of scarce resources" obsolete, he is all the more im-

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patient with fellow socialists who would today sacrifice the values of a dynamic and expanding economy to the establishment of an "ossified and featherbedded society" (p. 228). To him the "mixed economy" is not a lesser evil, a half-way house on the road to total collectivization, but a valid ideal in itself. To lay bare the rationale of this new type of society is the task to which he has so successfully devoted himself.

Mr. Crosland's targets for attack are mainly two: the English school system; and the continuing vast inequalities of property ownership. The former denies equality of opportunity besides breeding snobbery and elitism; the latter permits, in spite of heavy taxes on income, greatly unequal "life chances" and standards of living unrelated to individual merit. To remedy the former Mr. Crosland proposes eventual integration of the "public" (private) schools into an improved state system relying heavily on "comprehensive" secondary schools. He rejects a capital levy to effect wholesale redistribution of property on economic and social grounds. Instead he argues for heavier death duties supplemented (to prevent evasion) by a gift tax; and for a capital gains tax which, combined with profit taxes designed to discourage distribution of dividends, will prevent owners from profiting from the long-term appreciation of capital values. In proposing these and many other, less central, measures, the author draws extensively on comparative economic and sociological studies from abroad (particularly Sweden and the United States) and takes particular pains to meet the argument that socialist policies would lead to lessening incentive, lack of venture capital, and permanent inflation. If the book, in spite of its richness and logical structure, is unlikely to rekindle the dampened ardor of British socialists, it is probably due to the fact that Mr. Crosland's "New Jerusalem" is not too far removed from the Old England (or, worse, the United States) they know. But it would not surprise this reviewer if the practical measures adopted by future British Labor governments were to bear remarkably close resemblance to the policies outlined by Mr. Crosland.

KURT L. SHELL

HARPUR COLLEGE, ENDICOTT, N. Y.

Leninism. By ALFRED G. MEYER. Cambridge, Harvard University Press, 1957.—xii, 324 pp. $5.50.

A short, scholarly analysis of Leninism has long been wanted. The difficulties are formidable. Leninism is a complex body of theory and practice, necessarily chameleonic, and mainly polemi-

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cal. To bring it into focus without distortion is no mean task. Mr. Meyer has done this with notable success.

Seeking to make Leninism intelligible "as a history-making ideology", he has approached with caution a group of questions often too readily answered: is there a real coherence and consistency in Leninism, or was there a contradiction between Lenin's theory and his strategy, or was he essentially a Machiavellian who traded on the heritage of Marxist theory? Mr. Meyer shows us Lenin as now the unprincipled strategist, now the genuine theorist, now the masterly integrator of theory and strategy. How could Lenin be apparently such different things at different times, and even at the same time? Mr. Meyer's principle of explanation, which becomes steadily clearer as his analysis proceeds, is the principle of ambivalence. Lenin was ambivalent toward the proletariat (pp. 29, 44 *et seq.*), toward all presocialist phenomena (p. 136), toward nationalism (pp. 148, 229), toward "everything that existed" (p. 90). The Leninist, or Leninism, is ambivalent toward industrial capitalism and the West (p. 269), toward democracy and reform, toward bourgeois revolution, even toward Marxist theory itself (p. 279); an ambivalent attitude "toward everything" is "an underlying psychological and theoretical trait of the Leninist" and explains the ambiguity of Leninism as a guide to action in all those cases where the conflict within Lenin's views cannot be explained simply as responses to a changing concrete situation (p. 279).

This is a pretty heavy load for the concept of ambivalence to bear. Ambivalence means simultaneous attraction toward and repulsion from something, and in general usage it implies a deep-seated extra-rational attitude governing or distorting rational calculation. Yet the examples we are given of Lenin's "ambivalence" are examples rather of the penetration of his rational analysis. Surely a man who, confronted by a complex phenomenon (nationalism, proletarian consciousness, or industrialization), proceeds by separating mentally the attractive from the repulsive elements, and then calculating what course of action can separate these elements in fact, is not properly described as ambivalent toward the phenomenon in question. Ambivalence is more useful in explaining how the Leninism of our own day is simultaneously attractive and repulsive to men of various types, areas and classes (pp. 285-86); but here the ambivalence is in the people to whom Leninism appeals rather than in the Leninism.

Based (as any realistic theory must be) on a simultaneous long-range and short-range analysis, Leninism is indeed at many points (perhaps throughout) simultaneously optimistic and pessi-

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mistic. But does not this ambiguity lie in the forces to be dealt with, rather than in the theory or its value assumptions? Mr. Meyer thinks not. Lenin's ambivalence, he says, is inherent; it is "that dualistic view of things which crept into Marxism when the unity of theory and practice was revealed to be a myth or, at best, a mere postulate" (p. 90).[1]

However, ambivalence does not dominate Mr. Meyer's analysis. There are many insights which, though he relates them to that thesis, have independent validity. A particularly rewarding analysis is that of the "Dialectics of Backwardness" (ch. 12), in which he makes explicit Lenin's theory of "combined development" (i.e., that in backward countries, two class struggles proceed simultaneously—proletariat vs. *bourgeoisie,* and *bourgeoisie* vs. pre-capitalist dominant class), and shows how this, with the theory of uneven development of capitalism, has transformed Marxism. The law of combined development "converts the experience of western Europe, hitherto considered the standard pattern of development, into nothing but a unique, perhaps even a marginal, case" (p. 269). It is salutory to be reminded that Marxism as an ideology of the mid-twentieth century is no longer a Western construct; to glimpse it through the eyes of the backward peoples is to see what a new theory it has become. Mr. Meyer has given us not a glimpse but a clear picture of the new thing. It deserves wide attention.

C. B. Macpherson

University of Toronto

Soviet Russia and the West, 1920-1927: A Documentary Survey. By Xenia J. Eudin and Harold H. Fisher. Stanford, Stanford University Press, 1957.—xxxvii, 450 pp. $10.00.

Soviet Russia and the East, 1920-1927: A Documentary Survey. By Xenia J. Eudin and Robert C. North. Stanford, Stanford University Press, 1957.—xviii, 478 pp. $10.00.

After an interruption of some years, the Hoover Institution has resumed its important series of documentary publications in the Soviet field. The present two studies are intended to be part of a sequence on Soviet foreign policy. They will be widely acclaimed and, one trusts, widely used, since the editors have competently compiled two valuable collections of documents and supplied concise interpretative sketches that amount to a history of Soviet foreign policy and behavior abroad for the N.E.P. period. The breadth of coverage is impressive: the two volumes

[1] *Cf.* Meyer's *Marxism, the Unity of Theory and Practice,* reviewed in the December 1955 Quarterly.

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not only present the outlines of Lenin's and his successors' analysis of world affairs as well as the strategy and tactics of Narkomindel and Comintern, but they also deal with such complex and often obscure matters as Soviet policy in Afghanistan, Bokhara and Khiva; the rôle of trade unions in Leninist policy toward underdeveloped areas; the theory of foreign trade in dealings with capitalist states; the rationale of early Soviet "coexistence" and disarmament proposals; the progress of Oriental studies in Soviet Russia; and the relevance of military organization to foreign policy.

The underlying attitude is distinctly critical but reserved and consistently serious in approach and tone. While there may inevitably be disagreements about the selection or omission of particular documents, the presentation as a whole is expert indeed. Organizationally, perhaps the one complaint to voice is the regrettable separation, in each section, of the editors' own exposition from the supporting documents, which appear together at the end of each part. Some recent documents and studies—for instance, on Soviet-German relations—unfortunately seem to have become available too late to be considered for inclusion. Except for the Trotsky Papers at Harvard, the editors have, however, surveyed the field quite thoroughly, and to the specialist the detailed bibliographies appended to each of the volumes (also indicative of the holdings of the Hoover Institution) will be exceedingly welcome. The editors have wisely avoided duplication of materials already available in English in such compendia as Jane Degras' *Soviet Documents on Foreign Policy* and Shapiro's *Soviet Treaty Series*, but their annotations refer to these and other collections. Likewise, the excerpts and documents here offered include some from non-Soviet sources (though, generally, few memoirs have been used). Quite properly, newspaper editorials—even cartoons—have been heavily drawn on because of their quasi-official and often decisive character. Some problems—such as organization, financing, and personnel of Soviet foreign office and Communist International, and decision-making in Soviet foreign policy—have been virtually avoided. More could also be said about the relation between intra-party struggles and foreign policy. But all in all these two volumes provide a thorough reference work and guide to the early years of Soviet "peaceful co-existence" (as Merrill Spalding characterizes them in his lucid introduction). One hopes that, despite the greater dearth of source material, the editors will be able to maintain their standards in the subsequent volumes.

ALEXANDER DALLIN

COLUMBIA UNIVERSITY

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The New Class: An Analysis of the Communist System. By MILOVAN DJILAS. New York, Frederick A. Praeger, 1957.—vii, 214 pp. $3.95.

Milovan Djilas, former right-hand man of Tito, is unique in that he is the only top Communist ruler in history deliberately to bring about his own downfall through publicly denouncing the communist régime of which he was a part. No doubt others have become disillusioned with communism, despite the fact that they were beneficiaries of it, but no one else among the élite has had the intellectual honesty and moral courage to desert the conspiracy of lies and suffer the consequences. Many have repudiated communism after falling from grace, but he is the first Communist boss to renounce the perquisites of power on his own initiative.

Djilas might have written an inside history of Yugoslav communism, complete with many hitherto unknown details. (It makes one's mouth water to think what bits of historical information such a book could have contained.) He might have written a typical personal testament of how he became a Communist and the steps in the withering away of his faith. Instead he has chosen to give a theoretical "description of contemporary Communism", primarily in Yugoslavia and the USSR, with few specific references to persons or events.

As Djilas himself says, "almost everything in this book has been expressed somewhere else," principally by critics of communism in the free world, but he has many insights that only a person in his position could obtain. What is remarkable is that a leading figure from within the system should have come to the same conclusions as many observing it from without, and that his disaffection should be so complete.

Djilas points out, as have others before him, that communist revolutions have come not in highly industrialized countries, as Marx had predicted, but in underdeveloped areas where the people wanted to industrialize and felt that this could be done best under a system of egalitarian socialism. The Communist revolutionaries did bring about industrialization, says Djilas, but the proletariat did not benefit therefrom. Although the capitalists were dispossessed, there arose in their place a new class, the Communist bureaucracy, which "uses, administers and controls both nationalized and socialized property as well as the entire life of society," and whose power is "the most complete known to history."

What, according to Djilas, are the main features of the communist system established by this new class? It is bureaucratic and hierarchical. It is brutal, the most brutal in modern history.

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It worships the principle of ideological uniformity and imposes tyranny over the mind. It is wasteful economically since it destroys incentive, which leads to low labor productivity, poor-quality goods, and widespread theft of state property. Furthermore, it is unethical because of its obsession with power. Power, which originally was intended to be simply a means for the suppression of the *bourgeoisie* and the transformation of society, has become the "principal aim and essence of Communism."

Djilas sometimes writes with eloquence, especially when he is contrasting the noble idealism of the Partisan days with the corruption of Communist morals after the rise to power:

> History does not have many movements that, like Communism, began their climb with such high moral principles and with such devoted, enthusiastic, and clever fighters, attached to each other not only by ideas and suffering, but also by selfless love, comradeship, solidarity, and that warm and direct sincerity that can be produced only by battles in which men are doomed either to win or die. . . .
>
> However, all this slowly fades, disintegrates, and drowns during the course of the climb to complete power and to ownership by the Communists. . . .
>
> The wonderful human characteristics of an isolated movement are slowly transformed into the intolerant and Pharisaical morals of a privileged caste. . . . The former heroes who were ready to sacrifice everything, including life . . . for an idea, for the good of the people . . . become self-centered cowards without ideas or comrades, willing to renounce everything—honor, name, truth, and morals—in order to keep their place in the ruling class.

Djilas the rebel, who earlier was ready to be a martyr for communism, has chosen to be a martyr for truth.

THOMAS T. HAMMOND
UNIVERSITY OF VIRGINIA

Tito, Moscow's Trojan Horse. By SLOBODAN M. DRASKOVICH. Chicago, Henry Regnery Co., 1957.—xiv, 357 pp. $5.00.

This book, as the author himself acknowledges in the introduction, is not about Yugoslavia. It is a diatribe against the help extended by the West to Tito's régime, and a thesis that Tito's break with Moscow in 1948 and his subsequent behavior have fitted perfectly into Moscow's imperialist plans.

Now the first proposition, that the democracies should under no circumstances support a totalitarian régime, though questionable, is a perfectly tenable one. But to represent the Yugoslav defection from the Soviet bloc as anything but a defeat for the policy of the Soviets, and a defeat which has had serious conse-

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quences for them elsewhere, is clearly absurd. It is enough to read what the Soviet press had to say about Tito between 1948 and 1953, and to reflect on the events in the satellites culminating last year in the Polish and Hungarian developments, to see how the author's thesis flies in the face of facts. True, the post-Stalin régime has attempted—and at times successfully—to have some normalization of relations with Tito's Yugoslavia. But this attempt to make the best of a difficult situation, and to negotiate with the rebel and to appease him through diplomacy, is quite different from what the Kremlin would ideally desire in Yugoslavia: complete Soviet control on the model, say, of Russia's control over Bulgaria. Mr. Draskovich is guilty of the same error in reasoning which he denounces in those who have persuaded themselves that Yugoslavia entered the road toward democracy after her break with Moscow. Just as some people have foolishly concluded that Tito and his group became democrats because they broke away from Moscow, so the author, because he sees, and rightly so, Yugoslavia as a totalitarian and communist state, believes that the whole development has fitted Soviet plans from A to Z. The simple facts are that the Yugoslav régime, though now more lenient and tolerant toward its people than before 1948, is still communist and totalitarian, but at the same time, despite its accommodations with Moscow, still a grave inconvenience to Soviet Russia—still a living memento of a great defeat of Soviet policies. Does Mr. Draskovich believe that it would have been better for the democracies and for the Yugoslav people if an out-and-out Stalinist group had prevailed in Yugoslavia in 1948? If the answer is no, then his argument falls to the ground. It is equally clear that it is in the interest of the given people as well as of the democracies that a "national" communist régime should not be replaced by one completely subservient to Moscow. Certainly it was not in the interest of the U.S.S.R. that upon Gomulka's assumption of power Marshal Rokossovsky and most other Soviet officers with the Polish army were sent packing and the Polish armed forces returned to the Polish commanders.

The constant rebuttal of people like Mr. Draskovich has been that "national" communism is a tactical phase designed to soften the democracies, to "take them in", just as they were fooled by Soviet diplomacy during the war. But there is all the difference in the world between believing diplomatic assurances and believing facts. The Soviets *assured* the West at Yalta that they did not intend to communize Eastern Europe; it is a *fact* that Gomulka and Tito broke away from complete Soviet domination.

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The book does not offer anything new in the way of description of Tito's Yugoslavia or Titoism. Since Titoism is to the author but Stalinism in a new guise, and the strains in the relations between the Soviet Union and the satellites in reality do not exist and are a put-up job designed to fool the West, the problem of American policy toward the satellites simply does not arise. Nor does he throw much light on the internal problems of Communist Yugoslavia, on the chances that the régime will carry out an industrialization of the country without resorting to the same drastic and terroristic measures which were necessary in Russia to collectivize the agriculture and to exact from the working people the tremendous sacrifices of the last generation. The book is intended as a polemic and a warning, a denunciation of our national complacency and the unavoidable tendency to be fooled by appearances once we engage in international politics. But, as in all such exercises, the logic of Mr. Draskovich's argument is profoundly defeatist: There is nothing in the way of diplomacy, economic policy, and so on, that this country and its allies can do to weaken and disrupt the hold of communism in Eastern Europe and to checkmate Soviet imperialism. Fortunately, such is not the case.

ADAM B. ULAM

HARVARD UNIVERSITY

A History of Hungary, 1929-1945. By C. A. MACARTNEY. New York, Frederick A. Praeger, Inc., 1957.—2 vols. xvi, 494; iv, 519 pp. $20.00.

In their bitter struggle for freedom during the winter of 1956 the Hungarians stirred the sympathies of the entire Western world. This was not always the case. In the period that lasted from the end of the First World War to the end of the Second, Hungary's political motives were never clearly understood by the West. In fact, for many Westerners the very word Hungary evoked unpleasant images: arrogant nationalism, stubborn revisionism, anti-Semitism, archaic social relationships, and seeming obeisance to Nazi Germany.

Professor Macartney has no time for such stereotypes as these. On the contrary, he has a great affection for Hungary and the Hungarians, and his warm regard for them shows on every page. But this favorable attitude does not prevent acid criticism of party or government policies and of politicians. He pictures Hungary—a "Kingdom without a King ruled by an Admiral without a sea"—as a country where social and economic discontent was a matter for severe repression, where a narrow-minded gentry controlled and "cooked" elections to their taste, and

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where many leaders were inept men deficient in courage, intelligence and integrity. Yet Hungary is a country of contradictions and her people are contradictory. Their leaders, in many cases, were pro-German so long as the Germans stayed out of the country and made no demands either on behalf of the German minority in Hungary or on Hungary's domestic politics. After the Germans occupied the country, the Hungarian government itself led the anti-Nazi resistance movement. For example, when the Germans demanded the nazification of the Hungarian press, Prime Minister Teleki, outwardly acquiescent, quietly organized a secret news service. As Professor Macartney points out, "that so tortuous a device was necessary illustrates the peculiar and difficult situation in which Hungary was placed."

The portraits of Hungarian leaders, politicians, and premiers—Regent Horthy, Gömbös, Imrédy, Pál Teleki, Bárdossy, Kállay, and that Nazi-minded "mystic" Szálasi—are superbly etched by the author. Professor Macartney is fair in his evaluations and in his criticism of policies and people. He shows the Regent as a man of no great strength. He reminds us that premiers Teleki, Kállay, and even Admiral Horthy struggled desperately to maintain Hungary's independence of action and (to use their favorite expressions) "keep a window open to the west" and "weather the storm." Geography, war, and a near-tradition of revisionism required a policy of diplomatic deviousness. As Macartney demonstrates, contradictory maneuvers by Hungarian leaders of various parties barely concealed the consistency of Hungarian aims: to revise the frontiers set by the Treaty of Trianon and to keep the country out of German or Russian control. The portrait of Horthy approving the deportation of many Hungarian Jews to their death in the Auschwitz concentration camp and at the same time saving most of the Jews of Budapest sharply reveals the contradictory nature of the Regent's policies.

At the same time, men of consistently high political and moral caliber—men such as Pál Teleki, who committed suicide rather than dishonor a treaty with Yugoslavia—were rare in Hungarian political life. More common to the Magyar political scene were men like Premier Bárdossy, who bears the blame for the Hungarian invasion of Yugoslavia and for the declarations of war on the USSR and the United States. Although he did not want a German victory, he wanted an Allied victory even less. Only an overwhelming desire for the revision of Hungary's frontiers, a shibboleth to a generation of Hungarians, could account for a viewpoint so narrow and so unrealistic.

Hungary proved as nettlesome a German ally as she later proved a Russian satellite. In 1943, Kállay attempted to detach

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Hungary from the Axis camp but the Western Allies were far from the Balkans and the Hungarians refused to negotiate with the Russians or arrange the surrender of their troops on the Russian front. At the time, their attitude displeased the British and the Americans, but events since 1945 seem to support Kállay's judgment of the Russians. Nevertheless, the Hungarians soon had to come to terms with the USSR. Hitler, aware that Kállay was negotiating with the West, moved his troops into Hungary in March 1944. It is not to Admiral Horthy's credit that he did nothing to deter this act of aggression.

Unfortunately, the author is unable to answer many questions. One would like to know, for example, why the Hungarian government—after prolonged negotiations with the British—did not escape to the West and establish a government-in-exile, the reason for Horthy's visit to Hitler in 1944, why he failed to take proper measures to counter the German occupation, and under what circumstances or pressures he agreed to support Szálasi.

Professor Macartney's book is undoubtedly the most comprehensive history of contemporary Hungary in any language. He has produced it despite two major barriers: One, there exists no published collection of Hungarian diplomatic documents after 1921. Two, much of the material essential to the story has been destroyed by the Germans and the Russians, suppressed by the communist régimes, or withheld by Washington and London. As a result, Professor Macartney has had to rely on oral accounts given him by Hungarian politicians and on private collections of documents. Thus, while all the material is valuable, much of it is contradictory, a fact the author notes. But he has used masterfully the evidence he has been able to collect. When the curtain of secrecy now shrouding the Hungarian archives is lifted it is doubtful if his conclusions will be radically altered.

In brilliant detail Professor Macartney tells a story of heroism, glory and self-sacrifice, cowardice, treachery and incompetence. We are all indebted to him for a moving account of a people and a country who seem destined to relive in our time their long and tragic past.

J. B. HOPTNER

NEW YORK CITY

Memoirs of Michael Karolyi: Faith Without Illusion. Translated by Catherine Karolyi. With an Introduction by A. J. P. Taylor. New York, E. P. Dutton & Co., 1957.—392 pp. $6.50.

The tragic life of Count Michael Karolyi forms an integral part of the tragic story of Hungarian democracy in the twentieth century. After each of Hungary's two crushing defeats in the

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two world wars, she attempted to embark upon the road to democracy. Her first attempt in 1918, in which Karolyi played the leading rôle, ended in failure; so, too, did her second attempt in 1945, in which he played a subordinate rôle in a coalition régime. Both failures drove Karolyi into exile. After 1919, he lived in exile for a quarter of a century, an uncompromising foe of Admiral Horthy's reactionary régime. He died in his second exile in March 1955, at the age of 80, a Socialist who refused to compromise his humanitarian principles with the tyranny of the Communists.

Prior to the collapse of the Habsburg empire in the First World War, Karolyi stood boldly for everything that might avert catastrophe. He advocated democratic reforms in semifeudal Hungary; he castigated Austro-Hungarian dualism and became, under the influence of Professor Oscar Jászi, a believer in Danubian federalism; he opposed the German alliance and, during the war, urged a separate peace with the Entente Powers. But it was not until catastrophe came that Karolyi was called upon to lead his nation. In the bloodless October Revolution of 1918, he became Premier and, afterwards, President of the short-lived Hungarian democratic republic.

This Hungarian democratic experiment of 1918 ended in complete failure. The Entente Powers, represented in the Danube Valley by France, gave no support to Karolyi, while Hungary's neighbors, supported by the Entente Powers, gave no heed to Karolyi's appeals for coöperation. He fought desperately against the reckless territorial claims of the Czechs, Rumanians and Serbs. He lost the struggle for an equitable territorial settlement and, in the meantime, within ethnically mutilated Hungary he failed even to preserve democracy. The cause of this latter failure, he says, was the delay in land reform. This delay, in turn, was caused by the Social Democrats, who sabotaged the reform because, lacking a peasant political following, they were playing for time in order to build up a rural organization of their own (p. 149). Moreover, the Social Democrats betrayed Karolyi by proclaiming the dictatorship of the proletariat and handing over power, in March 1919, to the Communist leader Béla Kun (pp. 154-55).

However, Karolyi attributed his failure primarily not to collapse from within but to Western betrayal of democratic solidarity. His feelings of betrayal were further enhanced by the assistance which the Western governments rendered to Admiral Horthy's counterrevolutionary régime in Hungary as well as by the hostility with which these governments treated Karolyi himself during exile. Furthermore, not unlike Czechoslovakia's

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Eduard Beneš twenty years later, Karolyi, having been deceived by the West, put his faith thereafter in the East. He embraced socialism, anticipating the emergence of a new political and social order under the benevolent protection of Soviet Russia. Hungary, Karolyi believed, should make peace with the Slavs and form a Danubian federation as a bulwark against the threat of German imperialism.

During the Second World War, in the heyday of East-West coöperation, Karolyi was hopeful that history would prove him right. But the post-war years held in store new disappointments for him. He returned home in the spring of 1946 with the "certain" feeling that "whatever happened, I would never become an émigré again" (p. 319). He tried hard to understand the Soviet point of view and to blame the West, and the United States in particular, for the breakdown of East-West coöperation. He accepted the post of Hungarian Minister in Paris at a time, in the summer of 1947, when Communist aggressiveness had already sealed the fate of the post-war democratic experiment of the Hungarian coalition régime.

Karolyi's rôle as a distinguished fellow-traveler in the Hungarian Communist régime did not last long. In the fall of 1949, in protest against the Rajk-trial, he broke with the Budapest government and became, for the second time, an émigré. He refused, however, to join the anti-Communist exiles, preferring to fall between the two stools, as "the only place I could honourably take" (p. 368). Nor did he lose his "faith without illusion"—namely, that in an atmosphere of *détente,* in a Europe, that is, which would be "self-sufficient, independent and neutral, collaborating closely with a Socialist Britain, freed from American pressure," the peoples of Eastern Europe could regain their liberty from the U.S.S.R. in the form of an "East European Socialist Federation" (pp. 368-69).

If and when Karolyi's faith proves to be no illusion, posterity may rate him a much greater statesman than ever his contemporaries did.

STEPHEN BORSODY

CHATHAM COLLEGE, PITTSBURGH, PA.

Communist China Today: Domestic and Foreign Policies. By PETER S. H. TANG. New York, Frederick A. Praeger, 1957. –xvi, 536 pp. $10.00.

With the passing of each year it becomes more obvious that adequate interpretation of the sweeping changes in mainland China requires background knowledge of the ideology and methods of the Soviet system. But the Chinese Communists

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have been unable to escape many of the conditions imposed on them by their native environment and the institutions and traditions of the past. Adequate interpretation thus requires also a solid understanding of the Chinese landscape and society on which the Soviet system has been superimposed. Dr. Peter Tang brings to bear upon his study of China today just such a combination of background knowledge and experience, supplemented with incisive and rigorous analysis. He possesses a rare combination of language abilities (an attaché at the Chinese Embassy in Moscow prior to the Communist take-over and fluent in Russian) and academic training (certificate from the Russian Institute at Columbia and a Ph.D. degree at the same institution). Consequently his is probably the most comprehensive and thorough work on Communist China published to date. The book is written clearly and interestingly, with depth and thorough documentation. It is required reading for those who wish to understand the nature of the new despotism in China.

Tang starts his book with three chapters lucidly presenting the growth of communist ideology and its historical development in China including an analysis of the present leadership. His conclusion (stated in the Preface) is that "Communism in China is not a unique brand which differs from the Communism of the Soviet Union." This well-documented section provides a healthy antidote for the many works on Chinese communism which have argued that Mao and "Maoism" represent some sort of heresy within the ranks of world communism.

Dr. Tang then turns, in six successive chapters, to an analysis of the functioning of the total control apparatus of the new mainland régime. He presents this in terms of six great "machines" which function in meshed fashion for communist goals; these are the party, state, economic, social, military, and propaganda. In examining each of these machines he is careful to point out their interlocking relations through doctrine and concomitant holding of posts by high officials. On the basis of statements and actions he brings out with convincing force the over-all aims toward which these machines grind forward: "to heighten the power of the state" and "to extend Communism abroad" (p. 251).

Five subsequent chapters are devoted to Peiping's foreign relations. In analyzing the Moscow-Peiping axis Tang concludes that the subject of potential Chinese Titoism has been reduced by the growing strength of the ties to "the level of academic interest only" (p. 411). He feels that the integration of the power of the bloc is still in its initial phase and is progressing rapidly. With regard to South and Southeast Asia he warns that

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"the honeyed words of 'coexistence' are likely to prove merely a weapon of psychological warfare behind which to promote a program of Communist expansion emanating from Peking" (p. 450). The chapter on Chinese–United States relations points out clearly that as long as the United States continues the leader of the free nations it stands squarely in the path of Peiping's drive toward its communist goals. Tang illustrates this not only in terms of the ideological conflict postulated by Peiping but also in respect to four crucial areas where the two governments are in directly contradictory positions: Korea, Japan, Taiwan, and Viet Nam. He concludes in a final chapter that "the United States has been, still is, and most probably will continue for an indefinite time to be the arch-enemy in the eyes of the Peking regime" (p. 503).

There have been interesting developments inside the areas of Chinese Communist control since Tang finished his manuscript at the end of 1956. A few inadequacies of the volume have been brought to light. For example, he gives little attention to the population problem which the régime faced up to so dramatically in 1957. But such lacunae are fortunately minor and few. Dr. Tang's book is still a first-class contribution toward understanding the Mao régime. A number of writers who hastened to discern "new trends in Maoism" or a possible mellowing of the Chinese Communists when Mao announced a period of "blooming and contending" in the spring of 1957 were undoubtedly embarrassed by the subsequent crackdown on the "Rightists" in the fall and winter. Had they consulted *Communist China Today* they would have had a solid basis for a more realistic appraisal of Mao's tactical move in 1957. Indeed, Tang's volume provides a thorough basis for understanding most of the important subsequent developments. This is a measure of its scholarship and at the same time a testament to its usefulness as a basic reference work.

RICHARD L. WALKER

UNIVERSITY OF SOUTH CAROLINA

The German Policy of Revolutionary France: A Study in French Diplomacy during the War of the First Coalition, 1792-1797. By SYDNEY SEYMOUR BIRO. Cambridge, Harvard University Press, 1957.—Two vols. xvii, xi, 1104 pp. $15.00.

These volumes represent almost thirty years of research by an independent American scholar, who seems to have worked largely alone, for their publication and rather unusual advertisement by the Harvard University Press do not signify that the work was done at that university. It was in fact begun at Oxford, where

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the author took a degree of D. Phil. in 1928. The first duty of a professional reviewer is to be fair to someone not known to the academic club, but the present work more than complies with academic formalities, since it contains five thousand footnotes, a systematic bibliography and an excellent index.

It is very detailed, being confined to Franco-German relations for a period of only five years, from the outbreak of war in 1792 to the treaty of Campo Formio in 1797. No one else has ever examined this subject so thoroughly, with evidence gathered from the immense body of printed sources and special studies, and supplemented from the French, Austrian and other archives. The author provides an interesting amplification on many points, small in themselves but in some contexts decisive. He inclines to think that Montgaillard did really represent Robespierre in the mysterious peace overtures to Austria in 1794. He gives details on the subversive mission of Poteratz to South Germany in 1796, and on the movement for a Rhineland Republic in 1797. Secret journeys, parleys, intrigues and negotiations are traced out, and fine points in the treaties of Basel and Campo Formio are explained.

The book shows signs of having been conceived and mainly written before 1940. Franco-German conflict over the Rhineland is regarded as a current or timeless question, and indeed the book begins with remarks on the ethnic composition of Roman Gaul; but in the end the author greatly qualifies the supposed French yearning for the Rhine frontier. The concluding pages, on the issues in the war between France and the German states, are broadly conceived and well stated, but the body of the book does not lead in a balanced way to the final statement, because the book is essentially a move-by-move diplomatic history of an older kind. There is less development of ideological and social matters, and of the stresses of internal politics, than most writers on international relations today would give. The way of talking about paper money and inflation, or military occupation and government, does not always seem very sophisticated. Lastly, a number of works dating since the 1920's have been missed, or apparently discovered late in the process of composition.

The author declares that by 1795 there was no longer any necessary connection between continuation of the war and consolidation of republicanism in France. He seems implicitly to believe that liberal constitutionalism was a probable political alternative to the existing French government. He thus assumes rather than discusses the answers to basic questions. For Godechot, for example, the "triumvirate" in the Directory, in 1797, committed to a middle-of-the-road or upper-middle-class repub-

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lic, became dependent on expansionist generals, like Hoche in the Rhineland and Bonaparte in Italy, because they could not turn to reactionaries of the Right or to social revolutionaries of the Left, neither of whom would have maintained a liberal constitutional government, which was probably not possible in the disturbed France of 1797. For Mr. Biro the three Directors who made the *coup d'état* of 1797 are "rogues", "knaves" and "scum", who destroyed the constitution to save their own heads. Even if both were true the former would be more illuminating.

Though not uncritical, Mr. Biro easily believes the worst of some of his characters. He should remember that one could draw a revolting picture of George Washington by quotations from contemporaries. He calls the execution of Marie Antoinette "the most dastardly of political murders," and inquires into the "fiendishness" of those who, he thinks, cut out the hearts from the corpses of French kings, when actually these hearts had been piously excised by preceding generations during the solemnities of interment. The Harvard Press might have done the author a service by editing out such phrases as "ere long" and "bade fair", and by querying the effectiveness (?) of question marks in parentheses to modify words that may seem too strong. As one, however, who expects to make use of Mr. Biro's researches, I should like to conclude on a note of appreciation for what he has given us.

R. R. PALMER

PRINCETON UNIVERSITY

Heinrich von Treitschke. By ANDREAS DORPALEN. New Haven, Yale University Press, London, Oxford University Press, 1957.—x, 345 pp. $6.00.

Heinrich von Treitschke was born in Dresden in 1834. His father was a soldier in the service of the King of Saxony, and he himself might have chosen a military career had it not been for a childhood disease which permanently impaired his hearing. His fighting, therefore, had to be done on other fields, and it was. As historian, publicist and lecturer, he became one of the stoutest champions of German unity under Prussian leadership and—once that unity was achieved—one of the most bellicose voices of the new German nationalism. For almost a quarter of a century, students at the University of Berlin heard him fulminate against Germany's neighbors, call for the destruction of British sea power, and glorify war as an inevitable German destiny, provided by a beneficent deity as a means of purging the nation of the sins of materialism. That his teachings left their

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mark upon the pre-war generation of German leaders is undeniable, and his influence is painfully obvious in the thought and actions of such students of his as Alfred von Tirpitz, Friedrich von Bernhardi, Karl Peters and Heinrich Class.

Treitschke's baleful influence on German youth is the subject which has most frequently attracted the attention of those who have written about him, and, in their not always fruitful preoccupation with that theme, they have often neglected the other aspects of his career. The great merit of Andreas Dorpalen's biography is that it neglects nothing. This study represents the first attempt to see Treitschke in relation to the society in which he was born and lived, to describe the different phases of his career with the kind of detail that is illuminating, and to trace the evolution of his thought. Based on exhaustive and careful research, and written with clarity, vigor and grace, it is an unqualified success and a major contribution to historical knowledge.

Dorpalen has made the most of the extraordinary richness and variety of his subject's career. His account of Treitschke's relations with the national movement of the 1860's effectively reveals these weaknesses and inconsistencies of German liberalism that Treitschke's hero Bismarck was so adroit in exploiting; while his treatment of Treitschke's academic career, the controversies that accompanied his progression from Leipzig to Heidelberg to Berlin, and his relations with his colleagues and with the patriotic student organizations of his day tells as much about the character of German higher education in the imperial period as it does about Treitschke himself. Moreover, Treitschke was connected for over thirty years with one of Germany's most influential journals, the *Preussische Jahrbücher*, while, for thirteen years, he was a member of the Reichstag. In both capacities he felt called upon to address himself to every national issue from universal suffrage to Bismarck's social insurance and from the *Kulturkampf* to anti-Semitism, navalism and imperialism. Dorpalen, by his skillful treatment of Treitschke's passionate adventures as publicist and deputy, makes the whole of the political and social history of the Second Reich pass in review, and reveals some of the corrosive weaknesses of the imperial system.

For the historian, one of the most satisfying features of this biography is the thoughtful analysis that Dorpalen gives to Treitschke's great *German History in the Nineteenth Century*, a multi-volume work which sits on many bookshelves but is read less than it deserves to be. This neglect is perhaps due to the fact that Treitschke's frank lack of objectivity no longer seems as attractive as it did to his first readers, while the flight of the

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years makes it increasingly difficult to follow his tortuous arguments, especially in those passages where he is using history to fight contemporary battles. It is safe to say of most of the *German History* that it is now more impressive as literature than as history. Yet, as Dorpalen's analysis of the separate volumes shows, this is not entirely true; and, in the second and third volumes especially, Treitschke—thanks to his laborious work in the archives—made important factual contributions.

Yet here, as in everything he did, Treitschke was affected by contradictions that flawed his work and confusions that muddied his thinking. As a historian, he was sincerely concerned with getting at the truth, but, as Dorpalen writes, since he could never master his prejudices, "he remained unaware of the fact that his data would not support his conclusions." So too in his other work. His famous lectures on politics brought to his auditors a doctrine of nationalism that was none the less blatant because it was accompanied by specious moralizing and a good deal of bogus idealism. Yet Treitschke himself never seemed to be aware of the effect of what he was preaching, and he always concluded his lecture series by expressing the doubtless sincere hope that his students had learned "how carefully every political judgement must be considered" and had acquired a sense of the "humility of genuine scholarship" from his lectures. All too often passion blinded Treitschke to the true implications of what he was saying and writing. Thus, it is part of the paradox of this *praeceptor Germaniae* that, while in his heart he opposed all totalitarian claims of the state and saw man's duties to the state limited by the dictates of his conscience, his eloquent praise of power and of statesmanlike expediency helped, in Dorpalen's opinion, to precondition his countrymen for their reception of Nazism.

Gordon A. Craig

Princeton University

Parnell and His Party, 1880-90. By Conor Cruise O'Brien. Oxford, at the Clarendon Press, New York, Oxford University Press, 1957.—xiii, 373 pp. 45*s.*; $7.20.

This is a fine book. Clear, well-written, thorough, intelligent and objective, it is an example of modern historical scholarship at its best. Thanks to Mr. O'Brien and to Dr. F. S. L. Lyons' *Irish Parliamentary Party, 1890-1910,* we now have reliable guidance through the complexities of nationalist politics under Parnell and his successors. Mr. O'Brien also throws much useful light on the changing relationships of the nationalist leaders and factions with parties and politicians in Great Britain.

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The author deals fully with every aspect of the political scene, though the social structure of Ireland is outside his scope. He describes the type of member—local ties, educational background, social origins, religious affiliations—recruited by the party at different periods. He examines the organization of the party and its affiliated and subordinate units, and shows how a democratic façade often concealed the reality of autocratic central control by the chief or his few chosen assistants. He discusses the characteristics of the principal Irish leaders, and points out that the development of Parnell's own enigmatic personality was encouraged by political necessity as well as by personal idiosyncrasy and matrimonial subterfuge. And he analyzes with care the alignment, causes and course of the 1890 split. But the main element of his work is a discussion of the shifting strategies employed by Parnell between his assumption of the leadership and his fall. The author believes (and gives good ground for his conviction) that Parnell was, at least from 1881, essentially a moderate leader, working consciously and skilfully to win over to reconciliation with Britain a movement largely revolutionary in temper and long financially dependent on revolutionaries across the Atlantic. Mr. O'Brien's sympathies are with the nationalists, and against both the Irish extremists and the British Unionists, who both opposed the one chance of a settlement by consent. But though an admirer of Parnell, he is no idolator, and is sometimes strongly critical of the leader's personal conduct and political judgment.

The author is scrupuluously fair to all sides. He carefully dissects the allegations so freely hurled against one another by political rivals, but rejects the easy cynical assumption that men act always for hidden and discreditable motives, never on the honorable grounds which they profess. Yet he can be devastating, as in his succinct warning (p. 100 n.) about a conversation between two notorious intriguers, "This was not necessarily either sincere on the part of Healy or accurate on the part of Labouchere"; and quietly ironical, "The prelates whom the Irish people loved and trusted—and the *Freeman* was describing a class of prelates rather than defining an attribute of prelates generally . . ." (p. 216). His treatment of complex episodes, such as the simultaneous Irish negotiations of Chamberlain and Manning in 1885, shows an unusual capacity for fine yet clear analysis. And on pages 109-114 he gives a model demonstration of how to deal with doctrinaire Marxist history, demolishing with dispassionate courtesy not just the crude theory itself but also the subtheories by which, as he sees, the determined Marxist might seek to find a roundabout way to his original conclusion.

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He sees both sides of a question: that stronger party discipline did produce yes-men without capacity for leadership, but that this was a price worth paying (pp. 147-48). In analyzing the 1890 split, he points out that the successful rational men—the party leaders, the business men and solicitors, the candidates chosen by county conventions—were opposed to Parnell. But, he shrewdly adds: "To despise what appeals to the imagination is not, in politics, a rational program, and the element in the Irish party that could hold the imagination departed with Parnell. . . . The emotional 'residues' and intellectual 'combinations' that Parnellism had equivocally joined now flew asunder" (pp. 334, 351).

All writers on Ireland, or on nineteenth-century Britain, owe a great debt to Mr. O'Brien for a most informative, mature and stimulating work. It was fourteen years in the making, but worth waiting for.

P. M. WILLIAMS

JESUS COLLEGE
OXFORD UNIVERSITY

The Supreme Court: Constitutional Revolution in Retrospect. By BERNARD SCHWARTZ. New York, The Ronald Press Company, 1957.—v, 429 pp. $6.50.

Professor Schwartz's stated purpose, which he fulfills with distinction, is to present an account of the work of the Supreme Court since the "constitutional revolution" of 1937, the watershed of our modern constitutional law. Before then the Court exercised the powers of a superlegislature, often deciding questions on the basis of the personal policy preferences of its members; judicial supremacy was the outstanding feature of our constitutional system. Since 1937 the Court has removed itself as the controlling authority. Judicial activism, an instrumentalist manipulation of the law to achieve predetermined results, has been superseded by judicial self-restraint, a deference to the popular will expressed by the elected branches. The author's thesis is that self-restraint, with its test of the not-unreasonable-legislator as a means of determining constitutionality, has provided a pattern of unity and consistency to the bulk of decisions since 1937 in the various areas of our public law. These are arranged and analyzed under main heads: the Congress, the President, the Administrative Agency, the Courts, the States, the Individual, the War Power, and the Cold War. It is the work of the Court as an institution, not of its individual members, which concerns the author.

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As a record of the past twenty years of cases, the book is a skilful and accurate summary, expressed with clarity and vigor, which students and teachers will find useful as an expert guide. But the author has not been content to discharge his stated purpose with any detachment. A practicing lawyer, as well as a professor of law, he is always the advocate, freely criticizing or defending. This adds spice to the book because he can state his provocative judgments in words that crackle and sting. An informed reader will be stimulated by every page.

Yet the book has weaknesses that run through it like gaping fissures. Although Schwartz is almost obsessed by the conviction that judicial review is undemocratic and that deference to the people's representatives is always the proper posture for the Court, he neither advances a sustained theoretical justification for his position, nor consistently adheres to it, nor fairly presents an opposing argument. To write as if in tune to a "Mikado"-like chorus chanting, "Defer, defer to the Lord High Elected Officer," and then to castigate the Court for deferring to the executive in foreign affairs, to the Congress on the scope of the commerce power, and to administrative agencies on matters of *expertise*—this is too much.

Schwartz frequently complains that the Court has pushed self-restraint too far, but not where it hurts: in the field of civil liberties. Here he presents a stiff upper lip, though he disapproves of the Smith Act, the Internal Security Act, and their like. He tells us, correctly, that freedom is not an absolute and that unwise legislation can be constitutional, but he does not give us reasoned consideration of the strong argument that can be made against such legislation on purely constitutional grounds and apart from absolutism. He is so certain that judicial review is necessarily undemocratic and that active enforcement of the limitations of the Bill of Rights must necessarily be the product of personal preferences by the justices, that he makes judicial self-restraint, even faineance, an end in itself. He fails to realize that even self-restraint may be functionally instrumental or strategic; deference by a Vinson may be a pose to reach the desired result of sustaining a restrictive statute which the judge thinks wise.

In the course of confusing the preferred-position theory of the First Amendment freedoms with judicial absolutism, legislation and subjectivity, Schwartz argues that the Constitution and the Court do not and should not grade rights hierarchically. Yet the right of property, which he holds in equal esteem to rights of conscience or speech, can be denied with due process of law,

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while the First Amendment freedoms are protected unequivocally. They are given preëminent status by Cardozo's *Palko* opinion of 1937 which Schwartz approves of. He himself grades rights, giving those of the criminally accused a higher place than does the Court in many cases. In such cases he loses his enthusiasm for self-restraint, but he will defend the *Dennis* decision, apologize for *Carlson v. Landon,* and approve of unrestrained Congressional investigatory powers—all in the name of self-restraint and majoritarianism.

Yet ours is a limited government in which the majority govern subject to certain timeless ground rules expressed in the Bill of Rights, and it is the duty of the Court, even at the risk of being subjective, to apply constitutional limitations, not to rubber-stamp ballot-box decisions. Justice Frankfurter himself has warned that "the duty of deference cannot be allowed imperceptibly to slide into an abdication by this Court." It is curious that for one whose club is ever ready to swat the camel's nose of judicial legislation, Schwartz should see nothing poking through the tent of the school segregation opinions except mere deference to the equal protection clause. Those opinions can be supported without the delusion that they were dictated by words on parchment apart from judicial predilections. The Constitution is much clearer in First Amendment cases, although one would never suspect that from this book.

When the Court is confronted with a claimed violation of the Constitution, the Court, says Schwartz in all seriousness, "must lay the constitutional provision that is invoked beside the act that is challenged and decide whether the latter squares with the former." I had thought that this simplistic theory of judicial review died of critical derision after the A.A.A. case. Elsewhere in the book, Schwartz flies to the other extreme when he insists that the "Court is primarily a political institution," and "without a doubt . . . translates its own notions into the supreme law of the land," as it often must. In short, Schwartz's opinions do not "square" with each other, and he rarely allows the reader the opportunity of making up his own mind by providing as persuasively reasoned an argument as he is capable of giving to a position contrary to his own. Readers of this book would be well advised to look at Restow's "The Democratic Character of Judicial Review" (66 *Harvard Law Review* 193-224, 1952) and Cahn's "The Firstness of the First Amendment" (65 *Yale Law Journal* 464-481, 1956) which present arguments ignored by Schwartz. Despite his cocksure partisanship and serious inconsistencies, he has helpfully pulled together in read-

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able fashion a huge number of cases of the past twenty years, and, let us hope, has touched off a discussion which another will take up on the premise, as stated by him, that "Criticism to be fruitful . . . should be based upon understanding."

LEONARD W. LEVY
BRANDEIS UNIVERSITY

William R. Davie. By BLACKWELL P. ROBINSON. Chapel Hill, The University of North Carolina Press, 1957.—xiii, 495 pp. $6.00.

When we consider the shining lights among the Founding Fathers, we are perhaps tempted to look upon them as a special breed, raised up by a benevolent Providence to preside over the birth of the new nation. It is only when we consider the careers of some of the lesser Founders that we realize that the great men were only the ablest of a generation whose characteristics were a common heritage. The fact that this was a generation which had grown to maturity under the aristocratic influences of British institutions and before the leveling tendencies of the Revolution had taken effect is not usually enlarged upon by our nationalistic historians. But Professor Robinson's careful research and facile pen have resulted in a treatment of the career of William R. Davie of North Carolina which is a significant essay upon this subject.

Davie was born of Scottish parents in Cumberland County, England, in 1756. When the lad was eight years old his family migrated to the frontier Waxhaw region of South Carolina, where Andrew Jackson's family also settled. Here they joined the boy's maternal uncle, William Richardson, who was the highly respected pastor of the Waxhaw Presbyterian Meeting House. Growing up under such auspices, it was natural that young Davie was sent to the College of New Jersey [Princeton] for his education. Graduating in the class of 1776, he journeyed to Salisbury to study law under Spruce Macay, under whom Andrew Jackson also received his legal training. But the sound of battle was loud in the land, and in December 1777 he joined a detachment which was to march to the relief of Charleston, under command of General Allen Jones. Serving later, along with Marion and Sumter, as a successful partisan leader, Davie finally undertook the difficult assignment as commissary-general to the army of General Nathanael Greene. With the coming of peace, the young veteran married Sarah Jones, daughter of his first commander, and settled down to the practice of law in her home town of Halifax, North Carolina.

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Becoming now, at the age of thirty, a leader in peace as well as in war, Davie served as a member of the North Carolina delegation in the Constitutional Convention. Here he was prominent in the switch of North Carolina from support of the position of the large states to an alliance with the small states, which made possible the "great compromise" providing for equal representation in the Senate. The author states that "Davie's vote in the grand committee was without doubt the most decisive single vote cast in the convention. Indeed, it was one of the most decisive votes ever cast in any constituent body. It made possible the success of the convention and the Constitution." Afterwards Davie worked to bring about the adoption of the Constitution by North Carolina.

Soon after this accomplishment, he became the father of the University of North Carolina, the oldest of our state universities. Not only was he chiefly responsible for its legal establishment, he took a leading part in deciding on the location, making arrangements for construction, raising the endowment, selecting the faculty, and planning the curriculum of the institution. In 1798 he was elected governor by the Federalists, but resigned this office when President Adams appointed him one of the commissioners to negotiate a treaty with France after the X.Y.Z. fiasco. Returning home in 1800, three heavy blows fell upon him in succession. He found that Jefferson's followers had taken command in North Carolina; his wife died in 1802; and when he ran for Congress in 1803, he was, for the first and last time, defeated in an election. Saddened by these events, in 1805 he moved to a plantation which he owned in South Carolina and withdrew from public life. Fifteen years later he died at the age of sixty-four.

His wealth, education and bearing were such as to stamp Davie as an aristocrat, and men of his type usually supported the Federalist party. His code involved a strict sense of honor and dedication to the service of the public, which he never declined to undertake, however costly to his private interests. The election of Thomas Jefferson, whom he looked upon as a demagogue, appeared to him to be a calamity and he thought that "every man of reflection . . . must feel some unpleasant sensations when he looks forward on the future prospects of the American government, calculating that things will take their natural course and grow always worse and worse."

Davie was one of that admirable group of Federalists whose influence did not survive the election of 1800, but who were wise guardians in the days when their states were born. Stu-

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dents of our early history are deeply indebted to Professor Robinson for this scholarly and well-written biography of a Founding Father who had been all but forgotten.

THOMAS P. ABERNETHY
UNIVERSITY OF VIRGINIA

Banks and Politics in America from the Revolution to the Civil War. By BRAY HAMMOND. Princeton, Princeton University Press, 1957.—x, 771 pp. $12.50.

This book tells the story of banking chiefly in its relationship to politics in the United States (with a chapter on Canada) down to the Civil War. The major emphasis is on the first and second Banks of the United States, especially the latter to which a little over 300 pages out of nearly 750 are devoted. The material on state banking history, 1819-1860, is selective and illustrative, with special attention to the Suffolk Bank, the Safety Fund system, and free banking in New York and Michigan.

Mr. Hammond has one thesis to which he returns with persistent enthusiasm throughout the book, namely, that most American historians including Frederick Jackson Turner have seriously misinterpreted one aspect of American history. Led astray by the Populist demand for paper money in the latter nineteenth century, these historians have mistakenly supposed that the pressures throughout our history for paper money and easy bank credit have come chiefly from agrarians. This "mistaken notion" Hammond refutes at every possible opportunity. His belief is that from Colonial times to the Civil War the real pressures for paper money and the expansion of banking credit came largely from commercial interests—the merchants and speculators, the forward-looking, ruthless, and ambitious business men in the rising urban centers who, exploiting natural resources and labor, transformed the agrarian economy of the eighteenth century into the commercial-industrial complex of the latter nineteenth.

This is the central thesis, and the struggle over the second Bank of the United States is represented as the crucial battle in which the agrarians and the conservative business men were defeated by the innovating leaders, who represented the ineluctable forces of materialistic growth—leaders who on the basis of debt and credit expansion built industrial America. Hammond writes:

> The Jacksonian revolution was largely the conquest of the economy by . . . self-made men; and a prominent political crisis—the Jacksonian attack on the Bank of the United States—was produced by their intolerance of restraint upon their use of bank credit.

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> . . . Taking advantage of the traditional agrarian aversion to banks and of President Jackson's particularly, the entrepreneurial rebels attacked what they called the monopoly and the tyranny of the federal Bank, ended its existence, neutralized the federal government's constitutional responsibility for the currency, made banking a business free to all, and thereby insured to enterprise an abundance of banks and of bank credit (pp. 740-741).

This thesis, while by no means original (he makes no claim that it is), is advanced nowhere in the literature more boldly, in more sweeping terms, or with more careful documentation. No thorough examination of this important interpretation of American economic history can be attempted in this brief review. But the courage of the author emboldens the reviewer to venture a few opinions. The emphasis upon the critical economic and political rôle of the aggressive, innovating, and credit-happy business men is, I believe, essentially sound and provides an approach to an understanding of the whole period which has been, at least until recently, too much neglected. On the other hand, the thesis that the agrarians were, almost without exception and even before 1789, largely opposed to paper money and inflation is altogether too sweeping. At times the agrarians did come to fear and even to hate banks and corporations and to back restrictive legislation which was often vindictive and sometimes stupid. But generalization is dangerous here. First, it should be noted that farmers no less than merchants cannot always be viewed as a homogeneous group. In the second place, many American farmers were debtors and very often speculators, just as were the rising business men. When times were hard and the farmers had not too recently suffered from ruinous issues of paper money, they often favored paper money issues.

In a sense this book is a 750-page defense of Nicholas Biddle and a condemnation of Andrew Jackson and his political satellites. Biddle in his pre-1834 phase is praised for his sound administration of the Bank and his pioneering in the field of central banking. In his post-1834 character he is pictured as one who adjusted his sights to the future and allied himself with the progressive, expansionist and materialistic forces of the future. Nicholas Biddle has never had a more thoroughgoing, scholarly and devoted defender. Bray Hammond has a perfect right, of course, to admire Mr. Biddle. By the same token I cling to my privilege of not counting the Philadelphia banker among my own heroes. I simply cannot feel enthusiastic about or have much confidence in a central banker who was not responsible to the government or a president of a state bank who operated under the illusion he was still a central banker.

But no matter where one's biases may lie, let there be no doubt

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that this volume is a major contribution to the history of American banking and politics which no student can afford to ignore. Written with spirit and with a rugged kind of courage too often lacking in historical works, it provides at the same time a reliable work of reference and a provocative interpretation of American history.

GEORGE ROGERS TAYLOR

AMHERST COLLEGE

The Jacksonian Persuasion: Politics and Belief. By MARVIN MEYERS. Stanford, Stanford University Press, 1957.—vii, 231 pp. $5.00.

The vast literature on Jacksonian democracy illustrates once more how reasonable men may reach fixed conclusions at complete variance with each other. Parrington gave us Jackson as an agrarian liberal, Arthur M. Schlesinger, Jr., pictured him as the fountainhead of revolt among the city mechanics against business monopoly, Turner saw him as the hero of the frontier marching against the effete East, and Bowers, among many politically-minded writers, stressed the machine politicos of the Jackson movement. Those who have studied the speeches and letters of Andrew Jackson must feel doubts as to whether this planter, merchant, lawyer, Indian fighter, and hard-money man was a Jacksonian at all. Was Jackson the leader of a mass movement hostile to the concepts of capitalism or was he actually the symbol of men and ideas in the vanguard of modern capitalism? This is the question that Professor Marvin Meyers deals with primarily.

The author replaces the class-interest approach with an intellectual analysis of the outlook of representative Jacksonians from the president down. He focuses attention upon the appeals made by the Jacksonians to the people and draws his inferences from certain common elements in these political discourses and programs. Fundamentally, he develops the thesis that Jacksonianism is moralistic in emphasis rather than economic, despite the attack on the Monster Bank. The followers of Jackson tried to reconcile the simple yeoman values of the Old Republic with the free pursuit of economic interest. Jackson's idea of the people embraced an organic body, not groups sharply divided in a class struggle. His messages called for restoration of these old virtues, not the revolutionary upsurgence of a dispossessed people. Jackson left few large groups out of the "people"—they were planters, farmers, mechanics, laborers, and others. He denounced only the privilege-holding clique, which would embrace the second Bank of the United States.

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Professor Meyers' essay in intellectual history is unique for its varied methods used in discovering a contemporary definition for Jacksonianism—or, as he prefers to call these attitudes and beliefs, "the Jacksonian Persuasion". He invokes the image of America for these years held by Tocqueville: Jacksonian society consisted largely of the "venturesome conservatives", persons who loved change but hated revolution, pillars of conformity, defenders of property and propriety, acquisitive in a society that had no non-monetary rewards to offer. Here the masterless man found his values authoritatively in the voice of the majority. James Fenimore Cooper, a Jacksonian much of the time at least, is examined and found to subscribe to this picture—that of a "middling" class, middling in money, position and talents. Comfort, order and decency prevail under common sense. Meyers thinks that Cooper's America is something in between a Jacksonian projection and reality; it contained the models for its generation.

Jackson's speeches were a response to this situation. In the fight against the Monster, the background was "the bank-boom-bust sequence [which] was the primal experience of Jacksonian life, which fixed the content, tone, and terms of politics for as long as Jacksonianism counted in America." There was therefore "a central chunk of economic reality" behind the Monster. But fundamentally, thinks the author, the Monster was "a gigantesque figure in a moral drama, detached from ordinary experiences, upon which men could focus their discontent with society, and with themselves." Martin Van Buren never rose above the name Sly Fox to Jackson's Old Hero because he failed to fulfill the popular ideal of the Old Republic, although he spoke the same language as other Jacksonians. The author examines the consistent theme of Jacksonian ideas in Theodore Sedgwick, William Leggett and Robert Rantoul, Jr. All are to the author variations on a major theme.

There is a high plausibility to Meyers' interpretation of the Jacksonian spirit. It has the great virtue of meeting most of the contradictions that face those who try to discover a dominant mold in this movement. A more authoritative judgment as to its accuracy must await further studies of Jacksonians. The argument could be much better followed, had the author avoided the excessive use of highly novel phrases and expressions that constantly distract the reader. Fortunately there are summaries for those who lose themselves along the way and the central theme is often reiterated.

Harvey Wish

Western Reserve University

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BOOK NOTES

The latest work of the indefatigable Sir Ernest Barker, *Social and Political Thought in Byzantium from Justinian I to the Last Palaeologus: Passages from Byzantine Writers and Documents* (Oxford, at the Clarendon Press, New York, Oxford University Press, 1957; xvi, 239 pp. 30*s.*; $4.80), is the first and only book of its kind. There are six volumes by R. W. and A. J. Carlyle on political theory of the Middle Ages in the West. There is also a one-volume work on the same subject, introduced by Mr. Barker, in the "Hernshaw" series. But for the first time, as far as I know, a student of political thought brings together (translated) passages from Byzantine sources illustrating the ideology of the Greek Empire in the medieval East. A lucid account of the Byzantine literary tradition and of the Byzantine system of government and explanatory comments help the reader to appreciate some forty passages, taken mostly from the general literature, and partly from legal sources. The selections cover the whole period from the sixth century until the fall of Constantinople in 1453. The writing has the author's characteristic verve and charm—a no mean feat in dealing with the usually prolix and mostly obscure Byzantine texts. This is a book to own. The reviewer only regrets that the whole attention of the author has been concentrated on the ideas of the ruling class. The nature and character of kingship, the church and its relation to the monarch, the duties of the subject, and so on, are the topics dealt with. The voice of the common man is not heard in these scholarly debates. Yet, its echo can be perceived even in Byzantine sources. The explorer must leave the society of polite letters and condescend to listen to popular literature. I think, for instance, of an incident in the life of Andrew the Fool. He meets the magnificent funeral procession of one of the grandees of Constantinople. But he perceives demons following the body, and learns of unspeakable sins of unchastity and oppression committed by the rich man and detailed vividly by the narrator. It is only a prayer of Andreas, a Scythian slave who sleeps where the dogs lay, that saves the dead magnate.—ELIAS J. BICKERMAN, Columbia University.

In his *Bureaucracy and Society in Modern Egypt: A Study of the Higher Civil Service* (Princeton, Princeton University Press, 1957; xiii, 231 pp. $4.75), Professor Morroe Berger of the Depart-

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ment of Sociology and the Special Program in Near Eastern Studies of Princeton University makes several useful contributions to knowledge. First of all, our understanding of problems of public administration and politico-social change in contemporary Egypt is enlarged. Secondly, we learn something about problems of the modernization of underdeveloped societies in general. And, finally, we are acquainted with a shortcoming in current views of the nature of bureaucracy, as these views have been cumulatively developed in modern social science theory. Thus in Professor Berger's study comparing bureaucracies East and West, we see, once again, the uses of comparative study not only for achieving better knowledge about the concrete cases compared but also for developing more satisfactory social science theory. Three major kinds of data are used in this book: historical writings, contemporary documents, and responses to an interview questionnaire survey which Professor Berger composed and administered to 249 higher civil servants in four "non-sensitive" Egyptian governmental ministries (Agriculture, Municipal and Rural Affairs, Finance and Economy, and Education). Some minor part of the value of this book seems also to be due to the direct observations of the higher civil service made by Professor Berger during his year-long stay in Egypt during 1953-1954, the main purpose of which was the collection of the questionnaire data. On the basis of these several kinds of evidence, the limitations of which he points out in a careful scholarly fashion, Professor Berger discusses the evolution of the Egyptian bureaucracy during the last few centuries; the socio-economic background of the sample of higher civil servants he has interviewed; the relations between the Egyptian educational system and the occupational opportunity-structure; the social origins and changing social prestige of the bureaucrats; their public, professional and private loyalties, including among the latter kin, friendship, and community loyalties; and, lastly, the conflicts between bureaucratic norms and pressures for taking initiative, on the one hand, and for being subservient to superiors and established policy, on the other. The Egyptian bureaucratic structure, as Professor Berger sees it, is one in transition from a type in which effective and responsible action is produced by a combination of competence and *particularistic* loyalties to a type in which the same kind of action will be produced, as it is in more highly developed Western societies, by a combination of merit and *professional* and *public* loyalties. Each of these two types is suited to its own kind of larger societal environment. The problems that presently exist for the Egyptian higher civil service stem from the fact that the society as a whole and therefore also the public

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bureaucracy in particular are in this situation of transition, of confusing and uneasy equilibrium between two different social worlds. The problems, viewed in this way, are matters not merely of personal motivation and morality but of motivation and morality molded by different and changing institutional patterns. On such a view, we have a sounder basis for understanding and policy in regard to such problems in Egyptian society or, indeed, in any society. Anyone interested in the several kinds of knowledge mentioned at the beginning of this brief review will find Professor Berger's book valuable.—BERNARD BARBER, Barnard College.

Historians old enough to have experienced the current revolution in historical thinking are in a position to respond sympathetically to Metternich's lament that it had been his misfortune to have lived in an age of transition. Misfortune or not, it can certainly be said that the law of diminishing returns in interpretation has not yet become an embarrassment to the profession. Re-interpretations of such phenomena as capitalism, populism and socialism, such major figures as John Adams and Woodrow Wilson, and such major historians as Charles A. Beard and Carl L. Becker demonstrate that history continues to respond to present thinking quite as much as to present politics. In these circumstances, reassessments of the unsuccessful careers in rebellion of Nathaniel Bacon, Jacob Leisler, Daniel Shays and Thomas W. Dorr would be a most natural development. The first of them, *The Governor and the Rebel: A History of Bacon's Rebellion in Virginia* by Wilcomb E. Washburn (Chapel Hill, The University of North Carolina Press, 1957; xx, 248 pp. $5.00), is a solid, well-reasoned challenge to the interpretation of Bacon's career enshrined in the plaque in the Virginia House of Delegates which commemorates him for his fight for the people's rights and which was most highly developed in Thomas Jefferson Wertenbaker's treatment of him as "Torchbearer of the Revolution". Neither the Society of the Colonial Dames of America nor Mr. Wertenbaker is going to enjoy this book very much. Arguing that the older interpretation makes Bacon a crusader for democracy when it was actually the historian who was so, Mr. Washburn believes instead that democracy had nothing to do with Bacon's Rebellion, that Governor Berkeley was less a sinner than sinned against and that the most significant cause for the revolt arose from criticism of the governor's humane and statesmanlike policy toward the Indians. His animus, unlike that of his predecessors, is directed against Bacon as a representative of the hard, venturous, even rapacious, type of frontiersman who

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was at the same time motivated by race prejudice against the Indians. "A blood sacrifice", says Mr. Washburn, "was required. The frontiersmen's need was for a high priest to tell them the cause of God's wrath and what sacrifices they must make to appease Him. Nathaniel Bacon was fated to be the appointed vessel" (p. 35). Mr. Washburn's moral judgments about the frontier and the race question do not, however, intrude unduly. On the whole, *The Governor and the Rebel* is a thought-provoking work which, not content with merely retracing the paths of previous historians, incorporates fresh and exciting evidence from the Public Record Office in London and from papers in the possession of the Marquis of Bath. May other revisionist works be as relatively free of that extreme of enthusiasm which David Hume deplored in religion and which is even more justly to be condemned in history.—Chilton Williamson, Barnard College.

In *The Development of the German Public Mind: A Social History of German Political Sentiments, Aspirations and Ideas* (New York, The Macmillan Co., 1957; 524 pp. $6.00), by Frederick Hertz, the concept of the German public mind is broadly construed. The core is political. Much attention is directed, therefore, to the growing sense of German nationalism, to particularism and centralization, to the territories and the Reich and their relations with the papacy. At the same time the author recognizes that political concepts are formed and influenced by a host of factors alike of the body and of the mind: wars, social conditions, philosophical systems, juristic concepts and religious beliefs. One must take also into account the ways in which ideas were disseminated by parish preachers, wandering friars and minstrels, by tracts and by books. The time span is from Charlemagne through the Thirty Years' War. The result is a panorama vast and variegated. The author has drawn on sources well known and little known to present a picture of uncommon richness. At the same time the work has its limitations. Frequently it consists of summaries of tracts reported with fidelity and analyzed with discrimination but scarcely interpreted with freshness of insight. And this same comment applies to the work as a whole. It is not marked by new syntheses or intriguing suggestions as to lines of connection. It is rich rather than profound. Indicative perhaps is the omission of the name of Dilthey in the bibliographies. This is not his kind of *Geistesgeschichte*.—Roland H. Bainton, Yale University.

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JOHN BARTLET BREBNER

The Editors of the POLITICAL SCIENCE QUARTERLY with great sorrow record the death of their colleague, John Bartlet Brebner, in New York on November 10, 1957.

John Bartlet Brebner, Gouverneur Morris Professor of History in Columbia University, was born in a Canadian academic family on May 12, 1895. His father was Registrar of the University of Toronto and in that city Bartlet Brebner had his early schooling, finishing the equivalent of high school work at the age of fifteen.

His father insisting that the boy be at least eighteen before entering the university, young Brebner spent three years acquiring experience and reading. He took odd jobs, worked at a corundum mill, and devoured whatever printed matter he could lay his hands on. Finally at eighteen he matriculated at Toronto and read classics. Then the war came and he joined the Canadian Army; he rose to be a staff sergeant, after which he transferred to the Royal Artillery of the British Army and served to the end of the war as a second lieutenant.

His experiences in the Near East sharpened his nascent historical sense and increased his eagerness for learning. He entered St. John's College (Oxford) on demobilization and took his B.A. in 1920; then a B. Litt. in 1925 and an M.A. in 1926.

From 1921 to 1925 he was lecturer in modern history at the University of Toronto, and in the latter year came to Columbia as an instructor in Columbia College. His purpose being to obtain the doctorate, he joined the seminars of Robert Livingston Schuyler and Carlton J. H. Hayes, and in keeping with the native breadth of his mind followed courses in nearly all the branches of history offered by the Department–Intellectual, British, American, and European. Within two years he had passed his orals and published his dissertation, *New England's Outpost,* which is a study of Acadia before the conquest of Canada.

Dr. Brebner was immediately promoted to Assistant Professor. As such he took part in several of the important educational

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developments in Columbia College, notably in the "great books" course known as General Honors, which was to become so influential and for which he edited an early bibliography.

Meanwhile he pursued his historical researches and in 1933 published *The Explorers of North America.* Made an Associate Professor in 1935, he began to take a greater part in the conduct of graduate work at Columbia as well as in the furtherance of Canadian-American intellectual relations.

As full professor from 1940 on, Bartlet Brebner was recognized on both sides of the frontier and on both sides of the Atlantic as the leading authority in his field. He had published *The Neutral Yankees of Nova Scotia* in 1937, and in 1945 appeared his undoubted masterpiece, *North Atlantic Triangle.* In between, he had completed the late Marcus Hansen's *The Mingling of the Canadian and American Peoples* (1940) and he had begun to lay plans for two important works, a *History of Canada,* about to be published by the University of Michigan Press, and a critical review of industrial Britain from the eighteenth century to the present. At his death, four chapters of this last work were in publishable shape.

In recent years honors had come to him from Cambridge, McGill, and his own university, which he represented as orator and delegate on two significant occasions: the visit of the Queen Mother to New York in the autumn of 1954, and the celebration of the bicentennial of the University of Moscow in the spring of 1955.

His loss at a time when the ripest works of his mind were about to be brought forth, and when his colleagues had every reason to think he would live to complete them, leaves scholarship impoverished, his university deprived, and his friends grieving. They miss not only his learning and good judgment, but his quick response to any problem, intellectual or personal, his loyalty and public spirit, his wit, the courage and lucidity of his opinions, and the warmth and thoughtfulness of his friendship.

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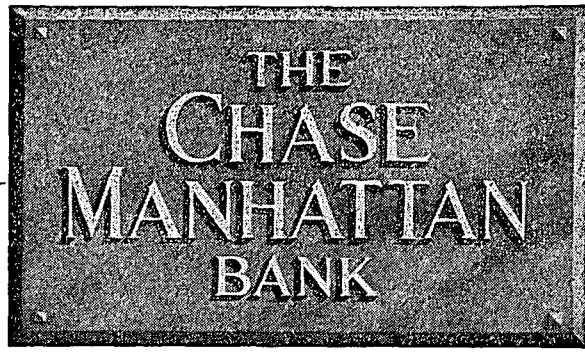

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